

LEXBASE

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*At present, in addition to government and non-government organizations,
over one thousand (1000) Canadian immigration practitioners are
directly linked by this non-profit network.*

1. IMMIGRATION POLICY AND OPERATIONS - 2007

A. LEXBASE 2007 PROJECTED SKILLED WORKER PROCESSING TIMES

Consumers of CIC services need to know, “*If I were to apply today for a visa, how long would it take?*” Here are some reasons why CIC can’t provide a straightforward answer:

- *The total number of immigrants to be landed will tend to vary every year.*
- *The proportion of “economic” vs. “non-economic” immigrants that are to be landed will tend to vary every year.*
- *There is often be variation in the number of immigration applications every year, in every immigration category and at every of the dozens of overseas immigration processing posts.*
- *There is often variation in the number of “targets” every year, for every immigration category, at dozens of overseas immigration processing posts.*
- *There are ‘local processing’ challenges at some overseas immigration processing posts. Political problems, security issues, environmental concerns, labour disputes, or problematic local documentation can cause serious processing delays.*

CIC valiantly manages the supply of available visas and the demand for visas. Available data obtained under the [Access to Information Act](#) shows that over time, with some few exceptions, CIC delivers a reasonable degree of uniformity and consistency in processing times between dozens of immigration processing posts, for similar cases. It is not a simple task.

How can the system be strengthened? In this issue of *Lexbase*, we raise the concern that CIC inadvertently creates a degree of false expectation of service to the public, by using “[months required to finalize applications](#)” as the only indicator of processing time on the CIC global website system.

“*Historic*” processing times will tell how long a person waited for the visa that was delivered yesterday. “*Prospective*” processing times will tell how long a person will have to wait for a visa, if the visa application was submitted today.

Providing “*historic*” processing time information alone, creates erroneous service expectations, leading to frustration for tens of thousands of visa applicants. Mass frustration translates to political controversy.

The *Lexbase Chart* compares: (1) the 2007 Target and (2) the 2007 inventory at every immigration processing post, with (3) each post’s stated “*processing time*” from: <http://www.CIC.gc.ca/english/department/times-int/02a-skilled-fed.html>. The simple comparison between the 2007 Target and the 2007 inventory is the “*prospective*” processing time. In a nutshell, the *Lexbase Chart* compares the “*prospective*” processing time with the “*historic*” processing time appearing on the CIC global website system.

Here are the results: In *Port-au-Prince*, the projected processing time for skilled workers and business immigrants is **23 years**. For people applying today in *Port-au-Prince*, that means any unborn children will be ‘*overage dependants*’ by the time the visa is ready. In *New Delhi*, projected processing times for skilled workers and business immigrants applying today is **12.8 years**. In *Cairo*, **10.3 years**. In *Manila*, **11.9 years**. In *Singapore*, **7.5 years**. Projected processing times for skilled workers and business immigrants applying today in *Buffalo* is 1.8 years. In *Buenos Aires*, 1.6 years. In *Ankara*, 1.8 years. In *Warsaw*, 1.8 years. In *Moscow*, 2.5 years. In *Taipei*, 3.8 years.

The **Africa/Middle East Region** ("months required to finalize applications") is reported by **CIC** to be 65 months, but our projection that is based on a comparison of today's inventory, with today's target, shows **9.9 years**. For the **Asia/Pacific Region**, **CIC** reports 66 months, but our projection shows **8.5 years**. For the **Europe Region**, **CIC** reports 62 months, but our projection shows LESS time than that: just **4.7 years**. For the **Americas Region**, **CIC** reports 31 months, but our projection shows much less time than that: **2.3 years**. For all processing posts, globally: **CIC** reports 62 months, and our projection based on today's inventory, with today's target, shows **5.9 years**. *But there is significant variation based on where you apply.*

Our 'projections' for the **Lexbase Chart** is "**ceterus paribus**" ("**all things being equal**"): we assume for the years to come, (1) every processing post will always meet but never exceed their annual target for *Skilled Workers and Business Immigrants*; (2) the overall total global annual target in 2007 for all *Skilled Workers and Business Immigrants* will always be the same; and (3) the distribution in 2007 for *Skilled Workers and Business Immigrants* between the immigration processing posts will always be the same. The "**real world**" that **CIC** lives in is **not** a 'ceterus paribus' world, for all the reasons we outlined above. Nevertheless, the **Lexbase Chart**, illuminates the real challenges faced by **CIC**. How does **CIC** fix this?

When **CIC** sees a processing time problem on radar as illustrated, for example, by the "**Port-au-Prince**" situation, a solution is to **increase** the "target". Similarly, **CIC** can **decrease** the "target" to bring processing times **up** to the 'average'. That would be the solution for the situation in **Ankara**.

CIC is continually adjusting targets, in order to manage the flow of visas, in the pursuit of fairness. This 'target allocation process' is the soul of the **Canadian** immigration system. An assignment of targets to each immigration processing post, and within each immigration processing post, is the most important decisions, politically and administratively, undertaken by the **Department of Citizenship and Immigration**. As noted in internal memo "**05-077 (RIM) 2006 Visa Targets And Instructions**":

*"These targets represent the balancing act we perform in order to meet the **Minister's** commitments to the provinces and **Parliament**; that is, to manage immigrant arrivals in keeping with the capacity of the **Canadian** labour market and of provincial and municipal social and settlement services, while facilitating processing to the extent possible. Mission targets are not set at random. They are set so as to maximize efficiency (and thus overtime minimize delay). They are set based on processing capacity and case inventories. In turn, processing capacity is allotted over time based on application rates. The targets thus represent an operational mapping out of applications." "RIM will assume your office will meet **but not exceed** its target unless we are advised. Target changes **must be approved** by RIM **before** they take effect."*

SYSTEMIC PROBLEM: The Canadian immigration system does not work on a 'first come, first served' basis regardless of where you apply for your visa. The system works on a 'first come, first served' for applications **at your specific processing post**. So when the demand for visas (the *inventory*) in a country grossly exceeds a supply of visas (the "target") for that country, there is a systemic problem. The "target" for the specific processing post cannot be made larger, because the political reality is that **Canada** will always want to control the number of immigrants coming here based on a "*country of origin*" basis, and so people from countries with 'high demand' will need to wait significantly longer for their visas. Some argue that controlling the number of immigrants based on a country of origin is tantamount to *discrimination* based on country of origin; others argue this is "*reasonably justifiable in a free and democratic society*".

What happens when inventories from some countries grow so large, that CIC cannot possibly deliver a reasonable degree of uniformity and consistency in processing times between dozens of immigration processing posts, for similar cases?

When the annual level of immigrants **cannot** be increased; when the proportion of *economic vs. non-economic* immigrant to be landed **cannot** be changed; when the system cannot be 'shut down' for new applications; and when increasing processing times globally is **not an option**; then the usual policy choices are: (1) increase the passmark; (2) increase with passmark with retroactive effect; (3) lower the demographic points; (4) lower the demographic points with retroactive effect; (5) create new rules that disproportionately impact on the country or region that is the source of the demand for visas (eg. new language rules; new educational equivalencies; or new work experience rules); (6) create a new 'Class', such as a "**Work Permit/Student Permit to Residence Class**", and absorb some inventory by facilitating "*temporary*" migration from high demand areas; or (7) create a new selection system.

The latter is under serious consideration. One way to guarantee no transparency and no accountability for the mechanics of the "target" system is to sell the public the concept of a 'lottery-like' selection system, where a 'secret' software program known only to **CIC** for "*security*" reasons, will 'weight' variables such as country of origin, skills, etc. Based on these 'weighted variables' the **CIC** computer will assign a finite number of "*winning visa numbers*" to each processing post (the "target"). And the **CIC** "software" will automatically, seemingly blindly, 'pick' lucky individual applicants from the inventory of applications at each processing post. Processing times for these lucky winners will be approximately one year.

"Losers" will be rejected by operation of law. "If you don't hear from us, you lost the lottery." The political benefit would be the departure of political controversy based on lengthy processing times. And, the "target" system would be veiled by "weighted variables" in the CIC computer software. But make no mistake: the heart and soul of the lottery system is the "target" system. The "lottery" system, like the "target" system, will deliver the targets at each processing post.

The political reality is that **Canada** will want to control the number of immigrants coming here based on their country of origin, whether it is called the "target system" or a target system delivered by "weighted variables" in a computer software program that looks like a "lottery".

People who do not want to play **Lotto Immigration Canada** can opt for the **PNP** or **Québec**; or the "Work Permit/Student Permit to Residence Class" (if when it is announced); or, join the **Family Class** or other inland processes. *Lexbase* would be supportive of a lottery system as long as **CIC** is required to table before the **House of Commons Standing Committee on Citizenship and Immigration** the entire lottery software program, and every proposed modification to the lottery software program prior to implementation ["Trust, but verify" (Ronald Reagan to Gorby)]. As long as there is the democratic safeguard of transparency and accountability before the **Standing Committee**, ...why not?

Revenons à nos moutons: But we have a policy option to reduce inventory at *high-demand* processing posts: "truth in advertising". **CIC**'s policy to only provide "historic" processing times is luring ever more inventory into an overloaded system. If people are properly informed that processing times in their region are lengthy due to increased demand, fewer people will apply. What If...: What if alongside the "historic" processing time information, **CIC** were to indicate at some processing posts: "Please note that we have experienced an increase in the number of applications over the previous two years. Our current processing and planning resources are unable to meet this increase in demand, and consequently, we wish to advise that new immigration applications submitted to our processing post may require approximately seven years, and possibly longer, prior to final determination."

Prospective applicants deserve "the truth". Their choice to wait it out, or not, will be an informed choice. That should make **CIC**'s management job *easier*. "Truth in advertising" works.

LEXBASE CHART: CIC 2007 TARGETS

Processing Post	Skilled Workers & Business 2007 "Target" vs. 2007 "Inventory"	LEXBASE – "Ceterus Paribus" Comparing the current 2007 target with the current 2007 inventory, "How many <u>years</u> will you be <u>in queue</u> if you apply today, and are processed 'first come, first served'?" Number of Years:	... the " <u>processing time</u> " on the CIC Website "Months Required to Finalize Applications" (Skilled worker)* source: go to - http://www.cic.gc.ca/english/department/times-int/02a-skilled-fed.html
AFRICA / MIDDLE EAST	<u>8,065</u> vs. <u>80,110</u>	<u>9.9 Years</u>	CIC informs the public: "80% of cases finalized in: <u>65 months</u> "
<i>Abidjan</i>	<i>90 vs. 1,356</i>	<i>15.1 Years</i>	"80% of cases finalized in: 25 months"
<i>Accra</i>	<i>1,200 vs. 11,807</i>	<i>9.8 Years</i>	"80% of cases finalized in: 64 months"
<i>Cairo</i>	<i>800 vs. 8,254</i>	<i>10.3 Years</i>	"80% of cases finalized in: 66 months"
<i>Damascus</i>	<i>3,500 vs. 38,748</i>	<i>11.1 Years</i>	"80% of cases finalized in: 68 months"
<i>Nairobi</i>	<i>750 vs. 4,990</i>	<i>6.6 Years</i>	"80% of cases finalized in: 55 months"
<i>Pretoria</i>	<i>475 vs. 3,015</i>	<i>6.3 Years</i>	"80% of cases finalized in: 61 months"
<i>Rabat</i>	<i>600 vs. 8,009</i>	<i>13.3 Years</i>	"80% of cases finalized in: 32 months"
<i>Tel Aviv</i>	<i>650 vs. 3,931</i>	<i>6.0 Years</i>	"80% of cases finalized in: 63 months"

Processing Post	Skilled Workers & Business 2007 "Target" vs. 2007 "Inventory"	LEXBASE – "Ceterus Paribus" Comparing the current 2007 target with the current 2007 inventory, "How many <u>years</u> will you be in <u>queue</u> if you apply today, and are processed 'first come, first served'?" Number of Years:	... the "processing time" on the CIC Website "Months Required to Finalize Applications"* (Skilled worker) source: go to - http://www.cic.gc.ca/english/department/times-int/02a-skilled-fed.html
ASIA / PACIFIC	<u>38,875</u> vs. <u>328,860</u>	<u>8.5 Years</u>	CIC informs the public: "80% of cases finalized in: <u>66 months</u>"
<i>Beijing</i>	3,350 vs. 17,053	5.1 Years	"80% of cases finalized in: 64 months"
<i>Colombo</i>	1,500 vs. 5,218	3.5 Years	"80% of cases finalized in: 63 months"
<i>Hong Kong</i>	6,500 vs. 29,126	4.5 Years	"80% of cases finalized in: 69 months"
<i>Islamabad</i>	3,600 vs. 37,389	10.4 Years	"80% of cases finalized in: 63 months"
<i>Kuala Lumpur</i>	340 vs. 1,540	4.5 Years	"80% of cases finalized in: 41 months"
<i>Manila</i>	5,000 vs. 59,389	11.9 Years	"80% of cases finalized in: 62 months"
<i>New Delhi</i>	10,500 vs. 134,635	12.8 Years	"80% of cases finalized in: 69 months"
<i>Seoul</i>	3,000 vs. 13,551	4.5 Years	"80% of cases finalized in: 26 months"
<i>Singapore</i>	2,700 vs. 20,198	7.5 Years	"80% of cases finalized in: 55 months"
<i>Sydney</i>	520 vs. 3,761	7.2 Years	"80% of cases finalized in: 28 months"
<i>Taipei</i>	1,865 vs. 7,000	3.8 Years	"80% of cases finalized in: 27 months"
EUROPE	<u>22,115</u> vs. <u>104,001</u>	<u>4.7 Years</u>	CIC informs the public: "80% of cases finalized in: <u>62 months</u>"
<i>Ankara</i>	1,000 vs. 1,765	1.8 years	"80% of cases finalized in: 68 months"
<i>Berlin</i>	850 vs. 3,101	3.6 Years	"80% of cases finalized in: 22 months"
<i>Bucharest</i>	690 vs. 3,034	4.4 Years	"80% of cases finalized in: 63 months"
<i>Kiev</i>	275 vs. 2,857	10.4 Years	"80% of cases finalized in: 73 months"
<i>London</i>	13,200 vs. 71,549	5.4 Years	"80% of cases finalized in: 54 months"
<i>Moscow</i>	1,800 vs. 4,469	2.5 Years	"80% of cases finalized in: 71 months"
<i>Paris</i>	2,700 vs. 12,522	4.6 Years	"80% of cases finalized in: 57 months"
<i>Rome</i>	350 vs. 1,498	4.3 Years	"80% of cases finalized in: 60 months"
<i>Vienna</i>	400 vs. 1,674	4.2 Years	"80% of cases finalized in: 34 months"
<i>Warsaw</i>	850 vs. 1,532	1.8 Years	"80% of cases finalized in: 68 months"
AMERICAS	<u>28,460</u> vs. <u>65,357</u>	<u>2.3 Years</u>	CIC informs the public: "80% of cases finalized in: <u>31 months</u>"
<i>Bogota</i>	200 vs. 3,293	16.5 Years	"80% of cases finalized in: 65 months"
<i>Buenos Aires</i>	175 vs. 562	1.6 Years	"80% of cases finalized in: 44 months"
<i>Buffalo</i>	24,500 vs. 43,019	1.8 Years	"80% of cases finalized in: 31 months"
<i>Caracas</i>	350 vs. 2,088	6.0 Years	"80% of cases finalized in: 22 months"
<i>Guatemala</i>	120 vs. 358	3.0 Years	"80% of cases finalized in: 21 months"
<i>Havana</i>	275 vs. 801	2.9 Years	"80% of cases finalized in: 47 months"

Kingston	600 vs. 2,110	3.5 Years	"80% of cases finalized in: 24 months"
Lima	280 vs. 1,641	5.9 Years	"80% of cases finalized in: 16 months"
Mexico City	450 vs. 2,422	5.4 Years	"80% of cases finalized in: 19 months"
Port of Spain	900 vs. 4,843	5.4 Years	"80% of cases finalized in: 32 months"
Port au Prince	90 vs. 2,152	23.9 Years	"80% of cases finalized in: 17 months"
Santiago	70 vs. 313	4.5 Years	N.A.
Sao Paulo	450 vs. 1,755	3.9 Years	"80% of cases finalized in: 16 months"
GLOBAL	<u>98,000</u> vs. <u>578,328</u>	<u>5.9 Years</u>	CIC informs the public: "80% of cases finalized in: <u>64 Months</u>"

*Disclaimer on the **CIC Website**: "Skilled Workers – Federal January 2006 to December 2006 **Citizenship and Immigration Canada** staff work at locations around the world. Officers in **Canadian** embassies, high commissions and consulates process applications abroad for permanent residence for people wishing to immigrate to **Canada**. The tables below show the number of months that were required to approve or refuse applications at visa offices around the world. The length of time it takes to finalize applications may be different at different visa offices. Past processing times may not indicate the length of time it will take to finalize applications in the future."

B. The Entrepreneurs

- (i) **The Ontario Perspective-Nadine Gomm to Josee White; John Forgie** (January 11, 2006): "I have now had a couple of interesting phone calls with the **RPA (Regional Program Adviser)** and an experienced officer in **Toronto**, regarding **Entrepreneurs. Inventory**: It appears that they have an inventory of about 1000 cases (I may be able to get exact figures). **Stay Cases**: They do NOT do "stay" cases. Presumably these are handled by the **Hearings Officers**. Although they know anecdotally that some of their cases receive stays, they never see them again. **Discretion/H&Cs**: They use discretion in much the same way as described in **ENF5/6**, and they use it quite frequently (*about 50% of potential reports receive discretion*). They look at extenuating circumstances such as illness, death in the family, etc., and when the client actually starts a business. They do most cases by mail - only interview occasionally. **Site Visits**: They do site visits twice a month - usually 16-20 cases. Some are "randomly" selected as a control, but most are identified as having issues where a site visit would seem appropriate."
- (ii) **Quebec Regional Program Advisor Nicole Grenier**: "Hi everyone, We do not have a separate set of guidelines other than the **Act**, the **Regs**, the manuals **ENF5** and **6** and **IP7**. We do write a report on each entrepreneur who does not meet the conditions because the bottom line question is: has the entrepreneur met or not the conditions and that is the conditions set out in **R98(1)**. If not, a report is written and then we decide whether to recommend a hearing or not based on extenuating circumstances and **H&Cs**. In some cases we will not write a report, for example if the entrepreneur has not complied with **R98(3)(4)** or **(5)** but where he has complied with **R98(1)** or is very close to comply with **R98(1)** and seems to make real efforts. Isn't the program's goal to recruit entrepreneurs who will do business in **Canada**? We apply **H&C** not on the determination of the admissibility but on the decision to refer or not for a hearing. Since we do site visits on each case, it makes it easier to decide if a report should be written. The **A44** report in itself does not take much time to write, what is time consuming is assessing **H&C** factors or extenuating circumstances and whether or not a report is written, this assessment has to take place."
- (iii) **Ontario Regional Program Advisor Diana Dwyer**: "Hi Nadine, I will also request input from the **Toronto Business Unit** on the current policy being applied in addition to my comments. Although the main policy applied is whether or not the entrepreneur has met the conditions of landing, extenuating circumstances are taken under consideration in the final decision and when referring to inquiry or choosing not to write a **A44** report. We do not have a separate set of guidelines or procedures in our region other than what is found or established by the **A76** or **IRPA** legislation and manuals."
- (iv) **Atlantic Regional Program Advisor Mary Fairfield**: "Nadine, I echo what **Diana** has said with respect to cases in **Atlantic Region**."

C. Spousal Work Permits of Laid-Off Foreign Workers

- (i) **Mandy Leighton: Electronic Arts in Burnaby** (February 16, 2006): "**E.A.** has laid off 125 employees in the last 2 weeks, the majority of which are on work permits. ...Many of these work permits are valid for another year or two."

...many of the spouses of these **E.A.** workers were issued open work permits in conjunction with the spouse's permit. ...The manager was advised that when the worker ceased their employment their work permit also ceased to be valid and the employee has no status in **Canada**. And that their spouses will no longer have a valid work permit.

- (ii) **Don MacKay Regional Program Officer (CBSA) Pacific Region to John Cambridge (CIC); Rod Friesen (CIC); Colleen Pontific RE: Electronic Arts in Burnaby** (February 21, 2006): "When a person in **Canada** on a valid work permit ceases to be employed (by the specific employer or occupation), the person does not cease to have status in **Canada**. The person still has **Temporary Resident** status for the duration for which they were granted that status. The issuance of a work permit in normal circumstances does two things: *Grants temporary resident status for the duration of the work permits and Authorizes the person to work in Canada under the conditions imposed on that work permit.*"

"A work permit does not oblige the person to work for the employer named on the document, rather it permits them to do so, and it may prevent them from working for any other employer, but their status as a temporary resident is not tied to whether or not they are actually working for the employer named on the work permit. As long as they are not otherwise violating the conditions of the work permit, they remain temporary residents."

"Open permits given to spouses based on their partner receiving a work or student permit also do not cease upon the change in their spouses circumstances (e.g. their open work permit remain valid). As with their partners document, they met the requirements at the time, comply with the terms and conditions imposed and would continue to be valid. All these are based on people being in **Canada**. When they seek entry at the **POE** their entry may be reviewed and renewed or changed within Immigration legislation and policies."

"...the lay offs were an unforeseen circumstance and there was no misrepresentation by the employees or company to obtain the work permits. The severance packages to the employees varies depending on the employee but can be a lump sum package to continuing on the payroll for a specific amount of time. This could include employer provided benefits such as medical insurance as the employee remains with the company."

"To remove the original status will have some "*spin off*" effects possibly as the employee cannot obtain changes to a work permit in **Canada** or their children may not continue to attend school if they are placed on a visitor document and the work permit is taken. As the work permit provides the visitor status and they are limited to where they can work, allowing them to remain on the document would provide an orderly move or transfer to new employment and location for the employees and their families."

D. Code C-10 "Significant Benefit to Canada" - Crew Member of Foreign Corporate Yachts

N.L.(Norman) Hopkins Regional Program Advisor, B.C./Yukon Region: "We are aware that every year at least two vessels owned or privately chartered by **US** corporations come to spend an extended period of time in **Canadian** waters. The vessels are registered in the **USA**. One, the "**MY (Motor Yacht) Daedalus**" is owned or exclusively chartered by **Boeing Corporation**. The other, the "**MY Alliance**" is owned or exclusively chartered by **PACCAR Corporation**. There may or may not be other such vessels operating in **Canadian** waters as well. ...the vessels are used exclusively for corporate purposes. These purposes include entertaining corporate customers or potential corporate customs of the respective corporations, and may also include incentive trips for corporate employees (managers, executives, corporate sales personnel, etc.). These yachts come from the **USA** approximately mid-May and stay in **Canadian** waters until approximately the end of August or early September. Normally they use **Campbell River** as their temporary "*home*" ports for these periods. The crew members (approximately 5 or 6 people for each) who operate these yachts are **US** citizens."

"Normal foreign worker requirements...would have the foreign corporations required to apply to **HRSDC** for "*confirmation*" associated with the issuance of "*work permits*". However, the companies, for many years, have successfully made the case that as these are the normal crew members of these vessels who would crew the vessels were they in **Canadian** or foreign waters, and that the vessels would not enter **Canadian** waters without their normal crew members, and as such, then, the entry of the crew members is tied to the entry of the vessel. It is further noted that while the vessels are in **Canada**, they purchase all their stores, including groceries, liquor and operational supplies, all their fuel and mechanical supplies, all their mechanical repair services, and all their fishing guiding services from **Canadian** suppliers in the **Campbell River, B.C.** area. As such, then, the entry of these vessels, and by extension the entry of the crew members tied to the entry of the vessels, has a significant positive impact on the local economy. **PACCAR** officials estimated in 1992 that the presence of the "**Alliance**" contributed approximately \$90,000 per week to the local **Canadian** economy."

"While sport fishing is a part of the "*yachting in BC experience*" offered to corporate clients/personnel aboard these vessels, these vessels do not operate as foreign fishing charters. As noted above, **Canadian** fishing guides are employed when organized sport fishing is taking place. Therefore the requirements for foreign fishing charters need not apply in these

corporate yacht situations - at least for the "*MY Alliance*" and the "*MY Daedalus*". For many years, the entry of the crew of these corporate vessels has, as noted above, been considered to provide "*significant benefits to Canada*". In terms of the IRPA regulations, then, it can be said that **R205(a)** describes this work **R205(a)**: "A work permit may be issued under **section 200** to a foreign national who intends to perform work that (a) would create or maintain significant social, cultural or economic benefits or opportunities for **Canadian citizens or permanent residents**". As such, then, an **HRSDC "confirmation"** is not required - i.e. this is a "*confirmation exempt*" work situation and work permits may be issued to the crew members of these vessels under the general "*significant benefit to Canada confirmation exemption (code "C-10")*."

"Apparently these vessels enter **Canada** and report their entry through the **CBSA's** marine "*Telephone Reporting System*" (**TRS**) for private vessels. It may be worthwhile to remind **TRS** operators, and for that matter other **CBSA** officers with **POE** examination responsibilities, that if a vessel is a corporate commercial vessel, such as described above, as long as the crew members are as described above, and the operations of the vessel are also as described and hence do constitute a "*significant benefit*" to **Canada**, the crew members do require work permits, but may be considered as being **HRSDC** confirmation exempt. A reminder may also be in order that crew members of strictly private vessels may, even for extended periods in **Canadian** waters, enter simply as visitors. Thank you - I hope this provides you with sufficient **CIC** policy information to allow **CBSA POE** officials to make appropriate decisions regarding the appropriate documentation for commercial corporate yacht vessels."

E. A Question of Apprehension of Bias

- (i) **Joanne Lawrence A/Supervisor, Temporary Resident and Refugee Unit CIC-Vancouver to Nadine Gomm**: "*Re: inland cases where a person requires a TRP, but has never been the subject of a 44 report with regard to the particular inadmissibility (where officers have the delegated authority to make decisions on the TRPs)*". I understand from officers in this unit that the policy in this case is to report the individual and then to approve or refuse the **TRP** application. However, there appears to be no clear policy with regard to whether or not the same officer should be completing the **44 report** and then the **TRP** approval or refusal for a particular client."

"The concern is, of course, apprehension of bias. In cases where the **TRP** is approved, it is unlikely that the client would complain about the same officer doing the **44 report** and the **TRP**. However, in cases where the **TRP** application is refused, this might be an issue. Another issue to consider is that, by the time the officer has done a **44 report** and gathered all relevant information, the officer has done considerable work and is well placed to make a decision on the **TRP** application. My preference is to establish a policy on this so that there is consistency regardless of whether the **TRP** application is refused or approved...."

- (ii) **Nadine Gomm**: "I'm not sure that there is really an issue of bias here, unless the officer has dealt with the client recently on another matter - for instance, if an officer refused to issue a **WP** [work permit] or refused to restore, then received an application for **TRP** from the same client, that should probably go to someone else. The delegation section dealing with **TRPs** reads: "*(designated authority to) form an opinion whether it is justified in the circumstances to issue a temporary resident permit to a foreign national who does not meet the requirements of the Act or who is inadmissible only on grounds of criminality, non-compliance with the Act or by reason of an inadmissible family member, issue a temporary resident permit or refuse to issue one.*" The ability to "*form an opinion*" and "*issue*" or "*refuse to issue*" is all described within one delegation narrative. I think this implies that the decision to issue or refuse flows from the authority to form an opinion, and this can be done by the same officer. The issuance of the **TRP** is also considered to be a discretionary tool at the disposal of an officer dealing with inadmissibility, so I don't think that it is necessary to merely "*recommend*" a particular action to another decision-maker. If the delegation is there, I think it can be exercised. **Nadine**"

F. Default for Sponsors: "a real or perceived gap" (a.k.a. "legal loophole")

- (i) **Alice Tang, Immigration Officer, Inland CIC Vancouver Admissions: Opinion on Default for Sponsors** (April 11, 2006): "I wonder if you would mind giving us your opinion regarding how **CPC-M** would handle this type of situation - default where payback has been attempted but province cannot accept and subsequently declares "*nil debt*." I think it is important that we be consistent, and perhaps the **CPC** has run across this type of situation in the past."
- (ii) **Nadine Gomm Regional Program Advisor to Alice Tang** (April 13, 2006): "I spoke with **Gina Ponziani** today (**CPC-M**) and she confirmed that they accept such letters from provinces saying that repayment has been attempted but not accepted. The reason that **BC** does this is partly because there was a real or perceived gap in former legislation regarding provincial social assistance payments, in addition to the statute of limitations issue. So, for consistency, we should consider this situation a "*NO default*." if client has tried but cannot comply with repayment for reasons beyond

his control, **CIC** does not consider it a default. **Gina** has also sent an email to the current **NHQ** advisor so that, hopefully, more guidance can be included in the manuals in future."

G. CIC Communication

- (i) *Maria Iadinardi to Patricia Hardie: Wait times for sponsorship applications from parents and grandparents* (November 18, 2004): "The next immigration story we are working on concerns lawyers' complaints about unduly long wait times for sponsorship of parents and grandparents. I was hoping you could comment on this area, and have a few basic questions:
1. Lawyers say the intended target for 2005 for numbers of parents and grandparents who will be allowed in under family class is: only 5500 to 6800. *What accounts for the dramatic decrease (2002, target was 16,000 according to lawyers)*. Is it because of the increase in sponsorship applications for spouses and dependent children?
 2. Lawyers also complain that because wait times stretch as long as 44 months (Accra), 29 months (Berlin), 29 months (Bogota)... in some cases the parents/grandparents may die before applications are accepted or become ill and therefore medically inadmissible. *Is this common? Is there a movement afoot to reform this?"*
- (ii) *Mariette Lachance to Charlene Burton; Frank Perriccioli; Raylene Baker: Processing times at CPC Mississauga for Sponsors-Grandparents and Parent applications* (May 30, 2005) "I am not too sure how to handle this one. We have already provided **Maria** with the general message. The journalist wants more specifics. To my knowledge, the communications strategy has not been finalized. *What are we allowed to say?"*

2. IMMIGRATION JURISPRUDENCE (during previous 30 days) FEDERAL COURT

I. CITIZENSHIP ISSUES

Absence of the statutory declarations from Tribunal Record had no material effect-Four year period immediately application

1. **WAI KWONG YU** 2007 FC 155 T-844-06 FEBRUARY 9, 2007
HENEGHAN J.: [...] [T]he information contained in the statutory declarations of the **Applicant** and his wife was otherwise before the **Citizenship Judge** [**Brenda Brown**]. She fully appreciated the reason for the **Applicant's** absences from **Canada**, that is to care for his ailing parents in **Hong Kong** and to run the family business in **Hong Kong**, for the purpose of generating income for his immediate family and his extended family. [...] [T]he absence of the statutory declarations from the *Tribunal Record* had no material effect. There was no breach of natural justice. In any event, not every breach of natural justice gives rise to a remedy. The **Applicant's** submissions in this regard appear to elevate form over substance. The relevant evidence was before the **Citizenship Judge** and was duly assessed by her. Finally, I turn to [...] submissions concerning the alleged miscalculation of time by the **Citizenship Judge**. [...] The **Citizenship Judge** correctly identified the relevant time periods, that is the four year period immediately preceding the **Applicant's** application for **Canadian** citizenship. She did not err in this regard. [Appeal dismissed]
COUNSEL: **DOUGLAS CANNON** **ELGIN, CANNON & ASSOCIATES** **VANCOUVER**

II. IMMIGRATION ISSUES

Student permit renewal-ESL-irrelevant factors in determining Applicant had taken unreasonable amount of time to learn English

1. **THI MY LINH DANG** 2007 FC 15 IMM-7338-05 JANUARY 9, 2007
KELEN J.: [...] The **Applicant** is a citizen of **Vietnam**. She came to **Canada** in August 2001 on a student's permit firstly to study **English** as a second language and later to pursue a career in accounting. [...] [S]he was supported by her cousin who paid her tuition expenses and provided her with room and **Board**. The **Applicant** met **Tom Tang**, a **Canadian** citizen, and married him on April 12, 2003. [...] [A] sponsorship application for permanent residence [...] was denied in January 2005 on the basis that the marriage was not genuine. The **Applicant** then applied to renew her study permit. Because her passport expired on June 13, 2005, the **Applicant's** study permit was renewed up to that date rather than for the usual one year period. The **Applicant** then sent her passport to the **Vietnamese Consulate** for renewal and submitted a new application to renew her study permit in April 2005. The **Applicant's** study permit expired on June 13, 2005. The **Applicant** claimed that she was exploring the possibility of enrolling in an accounting program at the *Southern Institute of Technology* but was unable to do so since she did not have a valid student permit. The **Applicant** also stated that she needed to complete an additional year of language training before studying accounting.

On October 20, 2005, the **Applicant** and her lawyer attended an interview with an **Immigration Officer** regarding the application to renew her study permit. The **Applicant** claimed that most of the **Immigration Officer's** questions dealt with her marriage and were not relevant to the renewal application or her intention to leave **Canada** once her studies ended. [...] [T]he **Immigration Officer** found that "there [was] little evidence that **Ms. Dang** will have a breakthrough in her academic results within [the] next term." The **Immigration Officer** also noted that the **Applicant** provided "conflicting information regarding her financial support in **Canada**" during her interview, but that the **Applicant** subsequently presented bank statements, which were accepted by the **Officer**, indicating that the **Applicant** was financially supported. The **Immigration Officer** concluded that the **Applicant** did not intend to leave **Canada** at the end of her authorized study period: *Ms. Dang came to Canada to study ESL and has been given plenty of time and opportunity to do this. She has been taken [sic] ESL courses for 4 1/2 years with modest success. As previously noted, she indicated that her*

knowledge of **English** is insufficient to presently undertake accounting program at SAIT which was her original goal. It seems unreasonable that having this goal prior to entering **Canada Ms. Dang** could not reach required fluency in **English** after 4 1/2 years of studying nothing else but **English** in an **English** speaking country. There is little evidence that this would change over the next six months and that the client intends to leave **Canada** at the end of the authorized period. [...] The evidence before the **Immigration Officer**, which includes progress reports issued to the **Applicant** by the **Canadian Conversation College**, indicates that the **Applicant** maintained satisfactory standing in her classes. Indeed, her grades in her courses were consistently listed as good to very good. She received a class/exam mark of 81%, and was only absent one day during her last term.

The **Immigration Officer** was entitled to consider the **Applicant's** progress in **ESL** studies within the context of her long term goal of studying accounting, as **paragraph 217(1)(c)** of the **Regulations** provides that an **Applicant** for renewal of a study permit must be in good standing at his or her educational institution. The **Applicant's** **ESL** College clearly documented that the **Applicant** was doing very well in her **English** language studies, and was in good standing. The **Immigration Officer's** finding of fact that the **Applicant** was progressing slowly was patently unreasonable. Moreover, the **Immigration Officer** erroneously found that the **Applicant** has been studying for 4 1/2 years, when in fact it was 3 years.

Evidence regarding financial resources: The **Applicant** also established that she had sufficient and available financial resources during her stay in **Canada**.

Evidence regarding whether the Applicant will leave Canada upon the expiration of the study permit: [...] [T]he **Immigration Officer** was obliged to consider the likelihood that the **Applicant** would leave the country, based upon the available evidence, when arriving at her decision. It does not follow that the **Applicant's** progress in learning **English** is probative of her intention to leave **Canada** upon completion of her studies. The **Immigration Officer** inferred from the **Applicant's** lack of progress in learning **English** that she intended to remain in **Canada**. [...] [T]his inference was patently unreasonable. The **Applicant** was asked several questions during her interview concerning her marriage. It was patently unreasonable for the **Immigration Officer** to consider the fact that the **Applicant's** application for permanent residence through spousal sponsorship was refused since **subsection 22(2)** of the **IRPA** provides that an **Applicant** can have a dual intent – an intention to become a permanent resident and an intention to become a temporary resident [...]. The fact that the **Applicant** has pursued an application to permanently reside in **Canada** with her husband does not establish that she would not leave **Canada** at the end of the period authorized for her study permit as required under **paragraph 216(1)(b)** of the **Regulations**. The **Visa Officer** failed to recognize that **IRPA** expressly allows the **Applicant** to simultaneously seek permanent residence status and temporary resident status as a student.

Conclusion: The only relevant criteria for an **Immigration Officer** to consider on an application to renew a study permit under **subsection 217(2)** of the **IRPA Regulations** are whether: **1.** the **Applicant** is in good standing at the educational institution at which she has been studying; **2.** the **Applicant** has sufficient and available financial resources to pay the tuition fees and maintain herself in **Canada**; and **3.** the **Applicant** will leave **Canada** at the end of the period authorized for their stay.

Without an evidentiary basis on which to support the **Immigration Officer's** findings, the **Immigration Officer's** conclusion that the **Applicant** would not leave **Canada** at the end of the period authorized for her stay was patently unreasonable. Moreover, by determining that the **Applicant** had taken an unreasonable amount of time to learn the **English** language, the **Immigration Officer** based her conclusion on irrelevant factors. As noted above, the **Regulations** in this respect only require that an **Applicant** maintain "good standing" at her educational institution, which she has done. The reason for continuing with her **ESL** courses was to reach a further level of proficiency in order to pursue her initial goal of studying accounting. [...] [T]he **Immigration Officer's** refusal to renew the **Applicant's** study permit was patently unreasonable. [...] [Application allowed]

COUNSEL: ROXANNE HANIFF-DARWENT DARWENT LAW OFFICE CALGARY

Skilled Worker-Paragraph 83(1)(c)-Work in Canada was under an exemption from the work permit requirement

2. XUNGONG TONG 2007 FC 165 IMM-2471-06 FEBRUARY 13, 2007

LEMIEUX J.: [...] He first came to **Canada** in November 2001 on a visitor visa issued by the **Canadian Embassy** in **Beijing** to attend a seven-day **Buddhist** retreat. [...] Since November 2001, **Mr. Tong** has renewed his temporary resident visa several times and worked continuously as a **Buddhist** monk, but not under the authority of a work permit; rather, being a religious worker, his previous work in **Canada** was under an exemption from the work permit requirement. From November 2001 to September 2004, he was employed by the **International Buddhist Association**, and under contract with the **Pu Ji International Buddhist Association** from September 2004 to August 30, 2006, earning an annual income of \$12,000 before applicable taxes "plus free meals and accommodation allowance". [...] I see no error in the **DIO's** [**N. Barnes**] determinations. On the adaptability factor, **section 186(1)** of the **Regulations** stipulates a foreign national may work in **Canada** without a work permit as a religious worker. The **Applicant** qualifies for this exemption. The language of **s. 83(1)(c)** of the **Regulations** is also clear that 5 points are to be awarded "for any previous period of work in **Canada** by the skilled worker" with the notion of "previous work in **Canada**" defined in **subsection 83(4)** providing for the purposes of **paragraph 83(1)(c)** that a skilled worker "shall be awarded 5 points if [a skilled worker] engaged in at least one year of full time work in **Canada** under a work permit." [...] [T]o accept the **Applicant's** argument would be to re-write the

Regulation in a manner not consistent with the purpose of the exemption – enabling persons to work in **Canada** who are here temporarily such as artists, foreign representatives and business people. The **DIO** was correct in not awarding 5 points to the **Applicant** under this factor.

The **Applicant's** argument on arranged employment also fails for two reasons. First, "arranged employment" in **subsection 82(1)** means "an offer of indeterminate employment in **Canada**". The record before the **DIO** did not include any such offer; the best that can be said is that the **Applicant** had expectations he would be offered a permanent job rather than being on two-year contracts. Second, [...] fairness did not give rise to a duty to reply to the **Applicant's** query of whether he needed to comply with **section 82(2)(c)** of the **Regulations** and obtain a LMO. [...] [G]enerally, the onus is on **Applicants** to provide all relevant information in support of their application. [...] **Visa Officers** are not in the business of giving legal advice. The **Applicant** had a legal advisor. [...] [T]he **Regulations** and **Operations Manual 6 (OP-6)** is clear on the point. [...] The **DIO** did not create any legitimate expectations which would create a legal duty to respond. There was no evidence of confusion on the point. [...] [T]he **DIO** was justified in not awarding a further 10 points to the **Applicant** on account of arranged employment.

Having regard to the conclusion reached on the arranged employment and adaptability factors, it was not unreasonable in the circumstances for the **DIO** not to pursue the issue of a further 5 points to the **Applicant** on account of the educational factor. [...]

I have reviewed several times the **DIO's** cross-examination which must be reviewed as a whole and not microscopically. **Subsection 76(3)** of the **Regulations** provides for the circumstances of the **DIO's** substituted evaluation. The standard of proof is on the balance of probabilities and not a demonstration beyond a reasonable doubt the **Applicant** may become economically established in **Canada**. [...] [T]he **DIO** appropriately gauged the **Applicant's** ability to become economically established in **Canada** on the balance of probabilities. The **DIO** stated several times the proper test is the **Applicant's** likelihood of becoming economically established in **Canada**. It is true the **DIO** in some answers used the expression doubts, dispel any reasonable doubt [...] but it is clear in answers before and after that he gauged his doubts or reasonable doubts on the lack of evidence provided by the **Applicant** he would likely be economically established in **Canada**. The **DIO's** cross-examination demonstrates he did not ignore the fact the **Applicant** had continuously worked in **Canada** for several years; had accumulated money; had a job offer, was making extra efforts to learn **English**. The **DIO's** main concern was lack of evidence he would likely become established: his income was weak, there was no evidence of his income from tax returns and there was only one letter of support. [...] [Application dismissed]

COUNSEL: PETER A. CHAPMAN

CHEN & LEUNG

VANCOUVER

References were provided by "co-ethnics"-letters might have been provided by friends/acquaintances and might not be bona fide

3. NABEEL ATHAR 2007 FC 177 IMM-1301-06 FEBRUARY 15, 2007

BLAIS J.: In January 2002, he applied [...] as a skilled worker under **NOC 1112 (Financial and Investment Analysts)** and **NOC 1122 (Management Consultant)**. [...] As there is no transcript of the interview, it is impossible to know exactly what concerns may have been expressed by the **Visa Officer [Moira Escott]** and how actively the **Visa Officer** questioned the **Applicant**. However, from the **CAIPS** notes, it is reasonably clear that the **Visa Officer** did question the **Applicant** with regards to his employment, asking about the number of employees in his company, the work he has done since arriving in the **United States** and the name of some of his clients. [...] [T]he **Visa Officer's** approach in conducting the interview was adequate. As noted [...] in *Verma v. M.C.I.*, [2003] F.C.J. No. 218, 2003 FCT 136 [...]: "The obligation of the **Visa Officer** is to conduct and interview, not an inquisition".

The **Visa Officer** also rejected the documentary evidence submitted by the **Applicant**, namely the various letters from past employers, as not providing the necessary evidence of paid employment. Based on her comments in the **CAIPS** notes that these references were provided by "co-ethnics", which she later explained in her affidavit as a way of expressing her concern that these letters might have been provided by friends and/or acquaintances and thus might not be *bona fide*, it would not be unreasonable to conclude that she rejected these letters because she thought they contained false evidence of work experience. Such a conclusion would clearly fall within the category of "credibility, accuracy or genuine nature of information", identified [...] in *Hassani*, as giving rise to a duty on the part of the **Visa Officer** to inform the **Applicant** of her concern and provide him with an opportunity to respond. [...]

The **CAIPS** notes following the interview do mention the **Visa Officer's** conclusion that the **Applicant** had failed to provide evidence of paid employment and that he was given a list of documents required in order to proceed with his application. Subsequently, the **Applicant** submitted additional letters from various companies in the **United States**, which also failed to convince the **Visa Officer** that he had been employed as a financial analyst. It is with regards to these documents that she recorded her comment that these were "all letters [f]rom co-ethnics" which, as she explained in her affidavit, raised doubts as to their credibility. What is also interesting is that the **Visa Officer** recognized in the **CAIPS** notes that she had a duty to inform the **Applicant** of concerns regarding the veracity of documents, as she wrote "procedural fairness requires subj[ect] to be advised that it is my opinion he has provided false doc[ument]s in support of app[lication] and be given opportunity to respond". [...] [T]he **Applicant** was informed during the interview of the **Visa Officer's** concerns regarding the veracity of the documents initially provided in support of his work experience. While it is true that the **Visa Officer** did not follow-up with the **Applicant** after receiving the additional documents, I do not think that the **Visa Officer**

had an obligation to keep following-up with the **Applicant** as long as she was not satisfied that he had provided the documents she requested.

Regarding the **Applicant's** education credentials, the **Visa Officer** also concluded that he had submitted fraudulent education documents, something which the **Applicant** strongly denies. After recording this concern in her **CAIPS** notes, the **Visa Officer** sent an official letter to the **Applicant** informing him of her belief that one of his diplomas was fraudulent and giving him an opportunity to respond before a final decision was rendered. Meanwhile, the **Visa Officer** proceeded with her own investigation of the document in question, including a request for verification sent to the **Islamabad** office. The **Applicant** provided further information in support of the legitimacy of the diploma in question and, despite her conclusion in the **CAIPS** notes that he did not possess the education experience claimed, she still awarded full points for education, a decision which she explains in her affidavit was due to the absence of any evidence that the document was in fact fraudulent, as the **Islamabad** office had a backlog and could not process her request for verification in a timely manner.

The **Visa Officer** expressed serious concerns regarding the **Applicant's** alleged work experience, as she was not convinced that the **Applicant** was actually doing the job of a financial analyst that he claimed to be doing in the **United States**. Since she had serious concerns regarding the **Applicant's** credibility, she asked that he provide proof of paid employment, specifically evidence of payment of compensation, for his most recent employment in the **United States**, which he failed to do. The **Applicant's** failure to provide the requested proof of compensation simply confirmed the **Visa Officer's** initial conclusions regarding his lack of relevant work experience as a financial analyst. In this situation, we can ask ourselves: *What else should the Visa Officer have done?* Should she have kept on asking the **Applicant** over and over for proof of paid employment until she received the documents she had requested during the interview? In my view, such an approach would have gone far beyond the requirements of procedural fairness identified in **Rukmangathan** and **Hassani**. [...] [T]he **Applicant** was informed of the **Visa Officer's** serious concerns regarding the credibility of the evidence submitted in support of his work experience. The **Applicant** however failed to address the concerns expressed by the **Visa Officer** and to satisfy her that he had the necessary experience as a financial analyst. There was no obligation on the part of the **Visa Officer** to ask again and again for proof of paid employment, as such an approach would lead to a reversal of the onus of proof in applications for a permanent resident visa. [...] [T]he **Visa Officer** did not breach the duty of fairness owed to the **Applicant**. [...]

[T]he suggestion that the conduct of the **Visa Officer** discloses a reasonable apprehension of bias should be rejected. While the **Visa Officer's** choice of words when referring to "*letters from co-ethnics*" may be questionable, it is not sufficient to disclose a reasonable apprehension of bias. In fact, the **Visa Officer** challenged most of the documents coming not only from **Pakistan**, but also from the **United States**, on the basis that they were not credible, and also rejected the **Applicant's** testimony as being vague. [...] Here, while the **Applicant** makes a number of allegations regarding the **Visa Officer's** conduct during the interview, these allegations are contradicted by the **Visa Officer**, whom the **Applicant** chose not to cross-examine on her affidavit. The **Applicant** having failed to demonstrate that a reasonable apprehension of bias exists, this argument must be dismissed. [...] [Application dismissed]

COUNSEL:

MAX CHAUDHARY

NORTH YORK

Negative discretion

4. HARBANS SINGH KAINTH 2007 FC 175 IMM-1545-06 FEBRUARY 15, 2007

GIBSON J.: [...] [T]he **Officer**, notwithstanding that the **Applicant** received sufficient points of assessment to justify issuance of a permanent resident visa in his favour, denied the **Applicant's** application based upon an exercise of negative discretion [...]. In the **CAIPS** notes [...]: "[...] *I have made this determination because [the Applicant] is at a stage of his career where it would be difficult to change direction and he has stated he does not intend to pursue being a paralegal in Canada but rather that he would do "any job in Toronto". In addition, because of his limited English abilities [the Applicant] stated he would interact only with other Punjabi speakers. This indicates he does not intend to integrate into Canadian society as a whole but rather to remain within his own community. [The Applicant's] spouse has a Master's Degree, however, she does not speak English and her experience would not likely be relevant in Canada. I do not feel that the number of points awarded (68) are a sufficient indicator of the [Applicant's] ability to become economically established in Canada.*" The **Officer** did not "double-count" the **Applicant's** limited ability in **English** but rather relied on the **Applicant's** performance at interview where he was remarkably vague as to how he intended to support himself in **Canada**, indicated that he intended to restrict his integration into **Canadian** society to a very limited element of that society and the reality that the **Applicant's** spouse, though highly educated, did not have experience that would likely be relevant in **Canada**. Against the standard of review of reasonableness *simpliciter*, [...] the **Officer's** determination to rely on negative discretion or negative substituted evaluation to reject the **Applicant's** application for permanent residence in **Canada** by reason of her concern that the points of assessment awarded to him were not a sufficient indicator of the **Applicant's** ability to become economically established in **Canada**, was open to her. [Application dismissed]

COUNSEL: WENNIE LEE

LEE & COMPANY

TORONTO

Skilled Worker-file transfer denied-R11

5. FRANCISCO JAVIER RAMOS-FRANCES 2007 FC 142 IMM-1062-06 FEBRUARY 7, 2007

DAWSON J.: [...] [He] applied [...] as a skilled worker in the occupation of "*Flight Crew Member*" (NOC) 2271. [...] The **Officer**

who reviewed **Mr. Ramos-Frances'** application had concerns regarding his work experience. Specifically, **Mr. Ramos-Frances'** salary did not appear to be commensurate with his stated occupation as a flight crew member. **Mr. Ramos-Frances'** application was not assisted by the fact that the letter sent by his employer for the purpose of verifying his work experience was silent as to whether **Mr. Ramos-Frances** had performed the actions or duties contained in the lead statement to **NOC 2271** or listed in the description of the main duties of the occupation. Therefore, **Mr. Ramos-Frances** was required to attend a personal interview at the **Canadian Consulate in Detroit, Michigan**. [He] responded to the correspondence notifying him of his scheduled interview by advising that he no longer had legal status in the **United States** so he would be unable to attend an interview in **Detroit**. He stated that he was now living in **Chile** and requested his file be transferred to the **Canadian Embassy in Santiago, Chile**, so he could attend an interview there. This request was refused. When **Mr. Ramos-Frances** did not attend the scheduled interview in **Detroit**, his application was assessed on the basis of the information contained within his file. [...] **Officers** are instructed in **section 5.17 of Chapter 1 of the Overseas Processing Manual** that: *Visa offices are not required to transfer applications for permanent or temporary entry to Canada upon the request of an Applicant or their designated representative. Visa offices should transfer files only if that transfer would enhance program integrity. Conversely, visa offices should refuse to transfer files if such a transfer diminishes program integrity. Officers should consider consulting potential receiving visa offices to seek assistance in finalizing cases before transferring a file. [...] As part of program integrity considerations, Officers should also be mindful that the intent of RII is to ensure that, as much as possible, visa applications are reviewed by the offices with the local knowledge and expertise necessary to conduct an effective case review. [...] Chile is not Mr. Ramos-Frances' country of nationality and he provided no information in his request for file transfer with respect to how long he had been in Chile, or what his legal status in Chile was. [...] [T]he Officer's concerns were relevant, bona fide and arose directly out of subsection 11(1) of the Regulations. Given that, the fact that there is no absolute entitlement to an interview, and the fact that the onus is on an Applicant for permanent residence to ensure that his or her file is complete, [...] the Officer did not breach the duty of fairness, either by failing to advise about her concerns under subsection 11(1) of the Regulations or by failing to transfer the file.*

With respect to the **Officer's** continued insistence that **Mr. Ramos-Frances** attend an interview, **Mr. Ramos-Frances** argues that knowing he could not attend an interview, fairness required the **Officer** to consider other means of obtaining information to satisfy her concerns. It is suggested that she could have called **Mr. Ramos-Frances'** former **Canadian** employer. [...] [F]airness did not require the **Officer** to make inquiries. [...] To the extent it is suggested that the **Officer** could have asked for further written information such as pay stubs, a copy of his work permit or a further letter from his employer, I am not persuaded that the duty of fairness required that the **Officer** advise **Mr. Ramos-Frances** of the inadequacies of his written materials so that he could, in effect, buttress his application. [...] [Application dismissed]

COUNSEL: CHANTAL DESLOGES

GREEN AND SPIEGEL

TORONTO

Investor-misrepresentation-Not criminally inadmissible

6. XIAO HUI LU

2007 FC 159 IMM-1110-06/IMM-1112-06 FEBRUARY 13, 2007

SIMON J.: [...] The decision of the **Immigration Section** was communicated to the **Applicant** in two parts; a letter from **Brian Beaupre, Immigration Operations Manager** in the **Immigration Section** of the **Consulate General** and a letter from **Yvonne Tsang, Immigration Officer** in the **Immigration Section** of the **Consulate General**. [...] The **Applicant** initially brought two applications for judicial review, both were granted leave. [...] By order of the **Court** the two files were joined. [...]

Officer Tsang's letter was more general than the one sent by **Manager Beaupre**. However, when read together, it is clear that the **Immigration Section** of the **Consulate General** determined that the **Applicant** contravened **subsection 16(1) of IRPA**, which states that a person who makes an immigration application must truthfully answer all questions put to them and must produce all relevant documents that an **Officer** reasonably requires, and as such was inadmissible to **Canada** due to misrepresentation, pursuant to **paragraph 40(1)(a) of IRPA**. I do not see how the fact that the **Immigration Section** of the **Consulate General** sent two letters to the **Applicant**, which when read together provide a detailed explanation as to the factual background relating to the **Applicant's** permanent resident application, the steps taken by the **Consulate General** to verify the information the **Applicant** provided and the reasons why the **Applicant** was considered inadmissible to **Canada** could constitute a violation of procedural fairness. These two letters do not contradict themselves. Thus, [...] the fact that the **Applicant** received two letters only clarified the reasons as to why his application for permanent residence was denied and in no way prejudiced him. [...]

Manager Beaupre found that the 2001 capital validation report submitted by the **Applicant**, as part of his application for permanent residence, was not authentic. As such, **Manager Beaupre** determined that the **Applicant** was inadmissible to **Canada** due to misrepresentation pursuant to **paragraph 40(1)(a) of IRPA**. [...] There is ample evidence supporting this finding, notably the following: there was no reference number on the 2001 capital validation report, which is unusual for such a document and which constituted a major obstacle in terms of verifying the authenticity of the document; **Ms. Lu**, one of the auditors who allegedly signed the 2001 capital validation report, stated repeatedly that the signature at the end of the report was not hers; inquiries into the validity of the 2001 capital validation report did nothing to dispel the doubts raised regarding the authenticity of the document as the staff of **Beijing Chen Jing** constantly changed their story as to the authenticity of the document; the explanations given by the **Applicant** and the Director of **Beijing Chen Jing** did not explain the various stories that the staff of **Beijing Chen Jing** told the **Consulate General**

in what concerns the 2001 capital validation report. Thus, the finding of **Manager Beaupre** that the 2001 capital validation report was not authentic was reasonable given the evidence and as such the intervention of the **Court** is not justified. [...]

I see no reason why [the two letters] cannot be considered together and why the **Applicant** when reading the letters together would not have had a clear understanding as to the reasons why he was found to be inadmissible to **Canada**.

Did Officer Tsang err in law by stating that the Applicant was "criminally inadmissible" when in fact the Applicant was found to be inadmissible due to misrepresentation? [...] **Officer Tsang's** [...] determined that the **Applicant** had not been truthful in his dealings with immigration authorities, and as such violated **section 16** of **IRPA**. The fact that **Officer Tsang** then went on to state that the **Applicant** was inadmissible to **Canada**, did overstep **Officer Tsang's** role in assessing the **Applicant's** permanent residence application. This being said, the **CAIPS** notes do indicate that **Officer Tsang** recommended to **Manager Beaupre** that the **Applicant** be found inadmissible under **paragraph 40(1)(a)** of **IRPA**. However, a final determination as to the inadmissibility of the **Applicant** was left to **Manager Beaupre**. [...] I do not believe her actions constitute an error of law. The fact that **Officer Tsang** wrote in her letter to the **Applicant** that "you are therefore criminally inadmissible to **Canada**" is in my opinion an error which can be associated to a typographical error and it is not of a conclusive nature. [...] Given that she did not specify under which specific provision of **IRPA** the **Applicant** was found to be inadmissible, and given the in-depth reasons provided to the **Applicant** as to why he was found inadmissible in **Officer Beaupre's** letter, **Officer Tsang**, although she makes reference to the "inadmissibility" provisions of **IRPA**, did not conclude that the **Applicant** was inadmissible due to criminality under **section 36** of the **Act**. [...] [T]here is no reason why the error made by **Officer Tsang** should result in the **Court** intervening in the case at bar. There is no indication in **Officer Tsang's** letter that she misunderstood the evidence before her and as such believed the **Applicant** was inadmissible under **section 36** of **IRPA** due to criminality, or that **Officer Tsang** believed that providing untruthful information made the **Applicant** inadmissible due to criminality [...]. This being said, the word "criminally inadmissible" may negatively affect the **Applicant's** ability to enter **Canada** in the future. Consequently, for good measure, I ask the **Minister** to take all efforts to clear any reference to the **Applicant** being "criminally admissible" from the records. [...] [Application dismissed]

COUNSEL:

STEPHEN J. FOGARTY

MONTREAL

117(9)(d)-"hardship" is not a term of art-Section 25-deceitful actions of her parents

7. AMANDEEP KAUR SANDHU

2007 FC 156

IMM-4176-06

FEBRUARY 9, 2007

LEMIEUX J.: [...] She did not disclose the **Applicant** was her child or that she had been married to **Mr. Sandhu** in 1989 rather than being his fiancée. The **Applicant**, therefore, was not examined when the applications for permanent residence in **Canada** of her father and mother were processed. In 1998, the **Applicant's** parents fraudulently attempted to sponsor the **Applicant** as their adopted daughter rather than acknowledging she was their natural-born child. This is the second application for permanent residence made by the **Applicant**. She had previously made a first application as a member of the family class but was refused on September 23, 2002, by **Officer Sarasa Nair** at the **High Commission in New Delhi**. **Officer Nair** concluded the **Applicant** was excluded from membership in the family class based on **section 117(9)(d)** of the **Regulations**. [...]

I am not at all moved by the father of the **Applicant's** evidence. He shows no remorse for his numerous successful and not so successful attempts to deceive immigration officials and causing unnecessary waste of public funds by forcing the **Canadian** government to undertake investigations to uncover his schemes. I do not doubt the sincerity of the **Applicant** when she says she wants to be reunited with her mother. However, I have reservations about the consequences she feels about not being with her parents. During her interview, which was conducted in **Punjabi** with the **Applicant** accompanied by her cousin, she simply stated she missed her mother and did not elaborate on the effects she identified in her affidavit. She also stated she liked staying at the hostel because she had friends there.

I reject the argument submitted by the intervener, the **Canadian Foundation for Children, Youth and the Law**, that even if a reasonable balancing of the various factors has been made by the **Officer**, the reviewing **Court** must go a step further and consider whether the damage to the child's interests is disproportionate to the public benefit produced by the decision. To require such a further step would be to reintroduce through the back door the principle confirmed in **Legault** that the best interests of the child is an important factor, but not a determinative one. Fourth, "hardship" is not a term of art. As noted in **section 6.1** of **Chapter IP 5** [...] the administrative definition of "unusual and undeserved hardship" and "disproportionate hardship" [...] are "not meant as 'hard and fast' rules" and are, rather, "an attempt to provide guidance to [page 564] decision makers when they exercise their discretion". It is obvious, for example, that the concept of "undeserved hardship" is ill-suited when assessing the hardship on innocent children. Children will rarely, if ever, be deserving of any hardship. That being said [...] the **Officer** was not "alert, alive and sensitive" to the child's best interests, more particularly in summarily dismissing the child's own concerns and ignoring, for all practical purposes, the financial implications for the child of her mother's removal. The matter was properly sent back by **Pelletier J.** to the **Minister** for reconsideration. [...] Counsel for the **Applicant** principally and essentially argued the **Visa Officer** in effect failed to take into account the best interests of the **Applicant**, as required under **section 25** of the **Act**, because he gave excessive and overriding weight to the deceitful actions of her parents to such an extent that the decision was punitive in nature. He made a subsidiary argument the **Applicant** asked for the reasons for decision which were not received. There is no substance to this argument as the **Applicant's**

application for leave and judicial review indicates the decision-maker's reasons were received. These are the reasons expressed in the CAIPS notes. I cannot accept counsel for the Applicant's argument on the main point while accepting it would be in the best interest of the Applicant to be with her parents. [...] The Visa Officer [Jacqueline Desjardins] engaged in the balancing test including the actions of her parents which breached the integrity of Canada's immigration system and the Applicant's personal circumstances. I cannot conclude the balancing was unreasonable. [...] I conclude by saying the Applicant's separation from her parents is their choice, and that it need not be that way. [...] [Application dismissed]

COUNSEL:

MIR HUCULAK

VANCOUVER

Marriage of Convenience-Poison pen-Statement of Defence

8. LUIZ GONCALVES ROSA

2007 FC 117

IMM-1421-06

FEBRUARY 2, 2007

BARNES J.: [...] The record before the Board reveals a very tangled factual web including lengthy and less than flattering immigration histories for both Mr. Rosa and Ms. de Oliveira. [...] Mr. Rosa came to Canada from Brazil as a visitor in 1996. After the expiry of his visitor's visa, he remained in Canada and worked here without legal status [...] and then] able to regularize his status in Canada by entering into a short-lived marriage [...]. Ms. de Oliveira also has a checkered immigration history in Canada. Before meeting Mr. Rosa, she had been unsuccessful in a number of attempts to obtain status in Canada. On two of those occasions, she submitted falsified or fraudulent records [...]. Mr. Rosa admitted that he had had a sexual affair with Ms. de Oliveira's sister, Sonia Quintela, approximately two months before his marriage proposal. Despite this affair and Ms. de Oliveira's admitted knowledge of it, Ms. Quintela travelled to Brazil to attend the wedding and also to act as the matron of honour. The issue of whether this marriage had been arranged for immigration purposes appears to have been first raised with Canadian immigration officials in Sao Paulo when they received a Statement of Defence filed in the Ontario Superior Court [...] by Ms. Quintela. [...] In the Defence, [...] Ms. Quintela asserted that Mr. Rosa had agreed to marry and to sponsor Ms. de Oliveira for landing in Canada for a payment of \$10,000 U.S. [...]

The Board was clearly troubled by the immigration histories of these individuals and it noted their motives and questionable behaviours in seeking to obtain immigration status in Canada. [...] The Board was entitled to examine the immigration histories of Mr. Rosa and Ms. de Oliveira as a means of assessing their credibility. The fact that Mr. Rosa had entered into a highly suspicious prior marriage leading to his acquisition of status in Canada was also a relevant, albeit not conclusive, consideration for assessing the bona fides of his marriage to Ms. de Oliveira. There was evidence here to support the Board's conclusion that this prior marriage was not genuine and it is not the role of this Court to substitute another view simply because a different conclusion might have been reached on the same evidence. Similarly, Ms. de Oliveira's prior fraudulent behaviour in seeking entry to Canada was relevant evidence bearing on her credibility. It was for the Board to determine how much weight to give to this evidence. It is also not correct that the Board's decision turned solely on this evidence of prior conduct. The Board had an ample basis for rejecting as untrustworthy the testimony of these witnesses concerning their own relationship.

The Board's adverse credibility assessment of these parties was soundly supported by the evidentiary record. There were several significant discrepancies in the evidence they presented upon which the Board based its conclusion that they had failed to prove a genuine marital relationship. [...] Mr. Rosa's rather bizarre description of his affair with Ms. Quintela, and Ms. de Oliveira's rather cavalier attitude to that situation, were seen by the Board to be disingenuous and its conclusion on this point is unassailable. The evidence by Mr. Rosa and Ms. de Oliveira that the Visa Officer had fabricated the notes of their interview admissions of bad faith was also clearly unbelievable and appropriately found to be so by the Board. The Board's finding that this relationship had been initially orchestrated for immigration purposes is, thus, not only reasonable but, on the evidence presented, compelling. [...] The Board did not say that an initial fraudulent intent to marry could never be displaced by the later development of a loving and bona fide marriage. The Board simply concluded that such a bona fide relationship never did exist between Mr. Rosa and Ms. de Oliveira. The Board's difficulty in finding that the motives for the relationship had changed for the better is hardly surprising in the face of Mr. Rosa's and Ms. de Oliveira's denials to the Board that the relationship had initially been formed for an illicit immigration purpose. [...] [T]his was quite obviously a relationship arranged among Mr. Rosa, Ms. de Oliveira and Ms. Quintela to effect Ms. de Oliveira's admission to Canada. [...] [Application dismissed]

COUNSEL:

ROBERT BLANSHAY

ROBERT I BLANSHAY LAW OFFICE

TORONTO

Criminal organization-37(1)(a) IRPA-Twenty-three separate gang-related incidents, lack of credibility

9. SINNARAJAH THANESWARAN

2007 FC 189

IMM-1122-06

FEBRUARY 20, 2007

SHORE J.: [...] [T]he question to be decided is whether there is any evidence capable of supporting the Board's finding that there were reasonable grounds to believe that Mr. Thaneswaran was engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence and punishable under an Act of Parliament by way of indictment. The Board first determined that the V.V.T. is a criminal organization defined by paragraph 37(1)(a) of the IRPA. [...] These criminal organizations do not usually have formal structures like corporations or associations that have charters, bylaws or constitutions. They are usually rather loosely and informally structured, which structures vary dramatically. Looseness and informality in the structure of a group should not thwart the purpose of IRPA. It is, therefore, necessary to adopt a rather flexible approach in assessing whether the attributes of a particular group meet the requirements of the

IRPA given their varied, changing and clandestine character. It is, therefore, important to evaluate the various factors applied by **O'Reilly J.** and other similar factors that may assist to determine whether the essential attributes of an organization are present in the circumstances. Such an interpretation of "organization" allows the **Board** some flexibility in determining whether, in light of the evidence and facts before it, a group may be properly characterized as such for the purposes of **paragraph 37(1)(a)**. [...] **Parliament** deliberately chose not to adopt the definition of "criminal organization" as it appears in **section 467.1** of the **Criminal Code**, R.S. 1985, c. C-46. Nor did it adopt the definition of "organized criminal group" in the **United Nations Convention against Transnational Organized Crime**. The wording in **paragraph 37(1)(a)** is different, because its purpose is different. [...] [A]fter determining that the **V.V.T.** was a criminal organization under **paragraph 37(1)(a)** of the **IRPA**, the only remaining question for the **Board** was whether there were reasonable grounds to believe that **Mr. Thaneswaran** was either a member of the group or was "engaging in activity" that was part of the **V.V.T.**'s pattern of criminal activity. [...]

[N]o single piece of evidence is determinative to the finding that an **Applicant** is engaged in gang-related criminal activity. What is necessary is that cumulatively the evidence clearly supports the **Board's** conclusion that there were reasonable grounds to believe that **Mr. Thaneswaran** was "engaging in activity that is part of a gang-related pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of **Parliament** by way of indictment". The totality of the evidence, including the record of twenty-three separate gang-related incidents, the lack of credibility of the **Applicant**, his relationships with **V.V.T.** associates and members and the **Applicant's** ten year weapons prohibition supports the **Board's** finding. [...] [Application dismissed]

COUNSEL:

MICHEAL CRANE

TORONTO

Sections 64 and 197 of IRPA-IAD stays removal-Appeal filed 1998-numerous breaches of conditions

10. IAN ANTHONY CRICHLAW [RESPONDENT] 2007 FC 122 IMM-3263-06 FEBRUARY 8, 2007

SHORE J.: [...] It is appropriate to seek immediate judicial review of the impugned interlocutory decision. Firstly, the **Board** made a determination which is fatally flawed and tainted with a fatal jurisdictional defect by wrongly deciding to retain jurisdiction over **Mr. Crichlow's** appeal despite **sections 64 and 197** of the **IRPA**, without assessing whether **Mr. Crichlow** has breached the conditions of his stay. Moreover, the impugned decision defines the scope of the ultimate decision to be rendered by enlarging it and allowing the **IAD** to consider matters which arguably are outside its jurisdiction, i.e. whether, in light of humanitarian considerations, **Mr. Crichlow's** breaches of conditions are serious enough to warrant dismissal of his appeal. [...]

Mr. Crichlow's appeal, filed on May 1, 1998 against the deportation order issued against him on April 30, 1998 was never allowed or dismissed. The execution of the said removal order was stayed for a period of seven years and **Mr. Crichlow** allowed to remain in **Canada** under terms and conditions. By granting a stay and periodically reviewing **Mr. Crichlow's** case, the **IAD** did not finally dispose of **Mr. Crichlow's** appeal filed on May 1, 1998. [...] Based on the erroneous determination that the September 25, 2003 decision was a new decision, unrelated to the initial decision of February 9, 1999, the **Board** decided that **sections 64 and 197** of the **IRPA** did not apply. It consequently retained jurisdiction over **Mr. Crichlow's** appeal, without considering the effect of the transitional provision and without considering the **Minister's** evidence regarding numerous breaches of conditions by **Mr. Crichlow**. [...] It is expressed in the transitional provisions [...] that appeals to the **IAD** are terminated in certain circumstances. The **Board's** decision to retain jurisdiction on **Mr. Crichlow's** appeal, on the grounds that **section 197** of the **IRPA** did not apply, without considering the **Minister's** evidence regarding numerous breaches of conditions by **Mr. Crichlow**, constitutes a clear excess of jurisdiction. [...] **Mr. Crichlow** is inadmissible on grounds of serious criminality as described in **subsection 64(2)** of the **IRPA**. [...] [Application allowed]

COUNSEL:

WILLIAM SLOAN

MONTREAL

Duty of fairness generally includes right to call witnesses to establish evidentiary basis of a claim or defense

11. SIRAK ABEBE AYELE 2007 FC 126 IMM-3463-06 FEBRUARY 7, 2007

DAWSON J.: [...] The **IAD** was skeptical of **Mr. Ayele's** situation. It found it to be highly unusual for a person to marry the sibling of a former spouse and also found that the nature of **Mr. Ayele's** relationship with his former wife was unusual and not credible. After hearing **Mr. Ayele's** testimony, the **IAD** was anxious to conclude the hearing and to dismiss the appeal. In the words of the presiding member, "[i]t will be a waste of the tribunal's time to continue to indulge the appellant in this waste of taxpayer's money". And so the **IAD** refused to hear a witness that **Mr. Ayele** wished to call. The witness was described to be **Mr. Ayele's** tenant and roommate who would have testified about **Mr. Ayele's** living arrangement. This would reasonably be expected to touch directly upon **Mr. Ayele's** relationship with his former wife. The evidence was, therefore, relevant. The duty of fairness requires that a party to a proceeding should have the opportunity to present his or her case fully and fairly. This generally includes the right to call witnesses in order to establish the evidentiary basis of a claim or defense. [...] [T]he **Minister's** reliance upon **Rule 37** in order to justify the refusal of the **IAD** to hear the witness is misplaced [...]. First, at the outset of the hearing [...] the presiding member ruled "I will allow you to deal with the witness, but obviously the identity and the credibility of the witness will be an issue". Thus, any hurdle posed by **Rule 37** was overcome [...]. Second, when the **IAD** later ruled it would not allow the witness to testify it did not refer to **Rule 37**. [...] Given that **Rule 37** was not relied upon, and the evidence the witness was expected to give was relevant, I find it was a breach of procedural fairness for the **IAD** to refuse to hear this witness.

Turning to the alternate issue of materiality there are, in my view, four points to be made. The first, and most important, point to be made is that it is not within the purview of a tribunal bound by the requirements of procedural fairness to dispense with those requirements because, in its view, the result of the hearing will be the same. Rather, it is for a **Court** reviewing a decision of a tribunal that has erred to determine whether, as a matter of administrative law, the consequences of a failure to comply with the requirements of procedural fairness are such that the discretionary remedy available to the reviewing **Court** should be withheld.

Second, the withholding of relief in the face of a breach of procedural fairness is exceptional. The right to a fair hearing has been described as "*an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have*". Third, one can never rule on the credibility of evidence that has not yet been heard. The presiding member violated this principle when he stated that even if the witness corroborated **Mr. Ayele's** testimony that subsequent testimony would not be credible. Fourth, the essence of adjudication is the ability to keep an open mind until all evidence has been heard. The reliability of evidence is to be determined in the light of all of the evidence in a particular case. This is the reason why an adjudicator must remain open to persuasion until all of the evidence and submissions are received. Evidence, that at first blush may seem implausible, may later appear plausible when set in the context of subsequent evidence. It is, at the least, suggestive of an impermissibly closed mind to state that "*there's no point calling the witness [...] when the evidence is of no use and calling the witness is futile*". [...] I am not prepared to speculate upon what the result might have been had the **IAD** not breached the requirements of procedural fairness. [...] [Application allowed]

COUNSEL:

REZAUR RAHMAN

OTTAWA

H&C assessment-General

12. SAJJADE HUSSAIN SHAH

2007 FC 132

IMM-3573-06

FEBRUARY 8, 2007

SHORE J. Haghghi may be distinguished from the case at bar on three grounds. First, the **Federal Court of Appeal** held that the **Immigration Officer** had a duty to disclose to the plaintiff a report which was prepared by a third party, namely a (**PCDO**), with which she agreed, and that she should have given him an opportunity to make corrections to that report. No report was filed by a third party in the case at bar. The analysis of the risk of return was made by an **Immigration Officer** alone and is part of the final decision [...]. It is not normal to provide reasons to the parties for comments before the issuance of the decision. The failure to disclose the summary report would only cause a problem if new facts were included in the summary which were not known to the **Applicant**. This is not the situation in this case. [...] Accepting the plaintiff's argument in the case at bar would amount to requiring administrative decision-makers to provide a draft of their decisions to plaintiffs before making a final decision, which would be ridiculous. [...]

The **Officer** listed all the factors mentioned by the **Applicant** in support of his **H&C** application, including the persecution, the danger of torture and the risks alleged in this application. The **Officer** dealt with the risks factors in the present **H&C** application. The **Officer** did not close his mind on the risks factor during his analysis of the **H&C** application. [...] [T]he **Officer** had in mind the complete situation of the **Applicant** when drawing his conclusions [...]. The risks mentioned by the **Applicant** in his submissions were duly and properly examined in the context of an **H&C** application, in light of the proper principles: whether the **Applicant** would suffer unusual and undeserved or disproportionate hardship to obtain a permanent resident visa from outside **Canada**. [...]

The fact that the **Officer** is the same person who studied the **PRRA** application did not prevent him from making a finding with respect to the alleged persecution and risks if the **Applicant** was to return to **Pakistan** to apply for permanent residence. The **Officer** was entitled to rely, in considering the evidence, on the negative decision of the **IRB**, confirmed by the **Federal Court**. [...] Despite the able efforts made by **Applicant's** counsel to demonstrate that the **Officer's** conclusion is unreasonable, the documentary evidence is not unequivocal. Questions of weight and credibility to be given to the evidence in risk assessments are entirely within the discretion of the **PRRA Officer** and, normally, the **Court** should not substitute its analysis for that of the **Officer**. [...] The **Officer** understood and was alert to the humanitarian and compassionate factors invoked by the **Applicant**. Namely, the **Officer** balanced these factors in the **Applicant's** case and concluded that no excessive hardships or difficulties would result for the **Applicant** by filing an application for permanent residence in the usual manner, i.e. outside **Canada**. His conclusions are based on the evidence and are reasonable, despite the fact that the **Applicant** disagrees with the **Officer**.

The **Officer** acted in conformity with the principles of natural justice: In addition, contrary to the allegation of the **Applicant**, the **Officer** did consider the **Applicant's** specific exhibits, specified as pertinent to the **H&C** and did appreciate the weight to be given to those exhibits. The **Officer** admitted the **Applicant's** specific exhibits in regard to the **H&C** and then appreciated their weight. The **Officer** properly exercised his jurisdiction and explained his concerns with respect to those exhibits. The **Officer** was under no obligation to contact the **Applicant** and advise him with his concerns with respect to the authenticity of the exhibits. It was the responsibility of the **Applicant** to provide the necessary evidence in support of his application and to ensure the quality of the exhibits produced. [...] [Application dismissed]

COUNSEL:

HARRY BLANK

MONTREAL

Notion of "establishment" designed to assess Applicant's connections to Canada, not the absence of any connections to homeland
13. ESTANISLAU BUIO 2007 FC 157 IMM-867-06 FEBRUARY 9, 2007

DE MONTIGNY J.: [...] a standard letter was sent to **Mr. Buio** shortly before the **Officer's** decision was made. [...] **CIC's** application process thus makes it clear, more than once, that an **H&C Applicant** must provide evidence to support his claim. As a matter of fact, **Mr. Buio** did provide some evidence: a notice of assessment from *Canada Customs and Revenue Agency*, letters from his doctor and from his employer, letters from various community and religious organizations, a letter from *Legal Aid Ontario*, a letter from the *University of Toronto's Comparative Education Service*, a letter from one "*Tininha*", bank statements, a copy of his lease, statements of earnings, and a performance evaluation form from his job. He cannot now claim that he was partially unaware of his onus to support his application. [...] **An Applicant** bears the onus of bringing both the information relevant to his claim, and the evidence supporting that information, to an **Officer's** attention. Written submissions alone may not be sufficient for an application to succeed. In other words, an **Officer** is entitled to disbelieve an **Applicant's** story if it is not borne out by tangible evidence.

Establishment: [...] He has emphasized that he has been away from **Angola** for twenty years. However, the notion of "*establishment*" is designed to assess an **Applicant's** connections to **Canada** – not the absence of any connections to his homeland. Thus, while I can appreciate the length of time **Mr. Buio** has been away from **Angola**, he has not spent the bulk of that time living in **Canada**. He left **Angola** in 1987, but only arrived in **Canada** in 2000. I am not trying to present this as a negative factor. Rather, I am simply not persuaded by **Mr. Buio's** extensive reliance on the passage of time since leaving **Angola**. Of more relevance is the way in which the **Officer** assessed the factors connecting **Mr. Buio** to **Canada**. Those factors are listed in section 11.2 of the *Immigration Manual* dealing with **H&C** applications. I cannot say the way in which the **Officer** assessed these factors was unreasonable, though a different **Officer** might have arrived at a different conclusion on these facts. As the **Officer** noted, **Mr. Buio** has no family or substantial assets in **Canada**. While he has lived here for about six years, this time spent in **Canada** was not due to any "*prolonged inability to leave*". Rather, his refugee claim was rejected in July 2003. After that time, **Mr. Buio** stayed in **Canada** without status, knowing the possibility of being deported once he ran out of legal options. Overall, it is important to remember that the purpose of assessing establishment is to determine whether the claimant is established to such a degree that removal would constitute disproportionate hardship. This **Court** has repeatedly affirmed the hardship which would trigger the exercise of a favourable **H&C** discretionary decision should be something other than that which is inherent in being asked to leave after one has been in **Canada** for a period of time. Finally, it is worth noting that establishment is not a determinative factor in an **H&C** application. It is one of many factors to consider. [...] [Application dismissed]

COUNSEL:

LORNE WALDMAN

TORONTO

PRRA-decision was not lengthy and, as admitted by the Respondent, could have been written more clearly

14. KETURAH LAVERNE CUPID 2007 FC 176 IMM-1737-06 FEBRUARY 16, 2007

SNIDER J.: [...] The **PRRA Officer's** decision was not lengthy and, as admitted by the **Respondent**, could have been written more clearly. The decision of the **PRRA Officer** is brief but must be reviewed in the context of (a) her role as a **PRRA Officer**; and (b) the submissions made to her by the **Applicant**. [...] In brief, the paragraph: describes the **Officer's** process of review of the submissions; explains why the evidence either did not differ from that which was before the **Board** or did not indicate changed country conditions; and concludes that the **Applicant** had not presented sufficient evidence to persuade the **PRRA Officer** "*to reach a determination that differs from the Board's in April 2003 as adequate state protection continues to be available to the Applicant in her home country*". [...] [T]he reasons are adequate to respond to the question of whether country conditions had changed. [...] [T]he reasons provide the basis for the **PRRA Officer's** decision. The somewhat unclear language and brevity of the reasons do not amount to a breach of the rules of procedural fairness. *Was the decision perverse, capricious or made without regard to the evidence?* [...] The question for the **PRRA Officer** is whether the **Applicant** has established that the situation has changed since the **RPD** rendered its decision. First, [...] while the documentary evidence is dated after the **RPD** decision, it does not contain any reference to the situation worsening over the "*gap*" period. Further, the submissions of counsel made to the **PRRA Officer** do not identify any changes. Rather, counsel appears to have merely provided arguments as to why the **RPD** erred in its conclusion. The **PRRA Officer** was, in effect, being asked to reverse the decision of the **RPD** on state protection. The evidence and submissions did not address the question of changed conditions. In short, the **Applicant** did not demonstrate that, although she was not found to be at risk as of the date of the **RPD** decision, she was now.

Further, the evidence referred to by the **Applicant** consists of passages extracted from documents that also include evidence of positive developments and continuing efforts (with some effectiveness) in addressing the problems of domestic violence. In her reasons, the **PRRA Officer** acknowledged that violence against women continues to be a problem. Thus, I am satisfied that she understood and appreciated both the positive and negative evidence before her. Given that this evidence was not personal to the **Applicant**, the **PRRA Officer** did not err by failing to make explicit reference to every negative comment in the country condition documentation.

The **Applicant** also submits that the **PRRA Officer** erred by failing to consider the letter from her friend that, among other things, referred to victims of domestic violence. It is evident that the **PRRA Officer** had read the letter from the friend. It also appears that the **PRRA Officer** did not accord it any weight on the issue of domestic violence. It would have been preferable for the **PRRA Officer** to

make explicit reference to the submissions of the friend on this issue. However, I am not persuaded that her failure to do so is a reviewable error. The submissions were as follows: *Crime in St. Vincent is increasing very drastically, especially domestic crimes. Every year you hear in the news of men killing their spouses or girlfriend because she wants to leave him. Not too long ago right in my neighbourhood a man run down his wife and chopped her to death right in her neighbourhood yard where she ran for help. No one is safe anymore.* These assertions by her friend are not substantiated in any way. The statement about the woman who was run down is hearsay. We have no information on the circumstances in which the unidentified woman was run down and killed. Quite simply, these statements do little, if anything, to assist the **Applicant**. They are of no probative value. In the circumstances, the **PRRA Officer** did not commit a reviewable error by failing to refer to these submissions on domestic violence. [...] [Application dismissed]
COUNSEL: MELINDA GAYDA REFUGEE LAW OFFICE TORONTO

PRRA-reasons are to be taken as a whole to see if, as a whole, they provide tenable support for the decision

15. MERDAN OGUZHAN 2007 FC 143 IMM-1526-06 FEBRUARY 7, 2007
DAWSON J.: [...] First, **Mr. Oguzhan** failed to establish a well-founded fear of persecution before the **RPD** and provided insufficient new evidence before the **Officer** on the **PRRA** application. [...] Second, the reasons of the **Officer** were sufficient. They set out the evidence and factors the **Officer** considered and explained why the **PRRA** application was refused. Third, I have not been persuaded that the **Officer** ignored relevant evidence. I have reviewed carefully the evidence counsel pointed to in oral argument as being relevant evidence ignored by the **Officer**. However, all such references discussed the treatment of individual members of **HADEP**, the *Kurdistan Workers Party*, ethnic **Kurdish** rebels and **Kurdish** rights activists. **Mr. Oguzhan** has not established that he fits within any of these categories. [...] The reasons are to be taken as a whole to see if, as a whole, they provide tenable support for the decision. Applying that standard of review to the **Officer's** decision, I have not been persuaded that the decision was unreasonable or made without regard to the evidence before the **Officer**. [Application dismissed]
COUNSEL: JUDY WELIKOVITCH TORONTO

Three MP's "gesture is of a political and symbolic nature and might be regarded as inappropriate interference in judicial affairs"

16. MOHAMED ZEKI MAHJOUR 2007 FC 171 DES-1-00 FEBRUARY 15, 2007
MOSLEY J.: [...] Fourteen affidavits were filed in support of the **Applicant's** release, in addition to his own. [...] **Mr. Bill Siksay, M.P.** stated in an e-mail filed without objection that he had met the **Applicant** and his wife and was willing to offer a conditional surety of \$250 as he is "very concerned that someone can be detained this long in **Canada** without a charge or open trial". In an e-mail message attached to an affidavit, **Mr. Omar Alghabra, M.P.** agreed to "add my name as a symbolic objection to indefinite detention and to stress the need for an open and transparent due process that I believe everyone is entitled to". Similarly, in a document filed at the hearing without objection, **Ms. Meili Faillie M.P.** and *Vice-Chair of the Standing Committee of the House of Commons on Citizenship and Immigration*, declared her opposition to the process and offered to pledge \$100 towards **Mr. Mahjoub's** release. [...] As for the three **MP's**, their gesture is of a political and symbolic nature and might be regarded as inappropriate interference in judicial affairs. In any event, the **Court** has no interest in accommodating their political motives. [...] Ultimately, the question of whether sureties and conditions would be sufficient to neutralize the risk in this case turns on whether the **Court** is satisfied that **Ms. El Fouli** can and will adequately supervise her husband and whether he will comply with the **Court's** direction. [...] I am satisfied by her testimony and that of the other witnesses that have come to know her, that she is a strong, independent and capable individual and will respect her obligations to the **Court** as a surety. I believe also that she will not fail the community members who have supported her and her family over the past six years. With respect to **Mr. Mahjoub**, I am satisfied that at this stage of his life and with the interests of his family and his health at stake, he has simply too much to lose should he be released and violate the terms and conditions. I find that the following factors do support **Mr. Mahjoub's** release upon strict conditions: 1) the sureties, notably **Mona** and **Haney El Fouli** are capable of providing effective supervision; 2) In light of **Mr. Mahjoub's** lengthy detention, his ability to communicate with individuals in the Islamic extremist network has been disrupted; 3) **Mr. Mahjoub's** case has been widely publicized; 4) It can be assumed that **Mr. Mahjoub** will remain a person of interest to the authorities; 5) I accept **Mr. Mahjoub's** evidence that he greatly wants to be with his family, and that this desire exerts a considerable amount of pressure on him to comply with his conditions; 6) I also accept that **Mr. Mahjoub's** desire not to be returned to detention is a legitimate one; 7) It can be assumed that individuals who want to hide from **Canadian** authorities would be less likely to attempt to contact **Mr. Mahjoub** in light of the public nature of his strict conditions; 8) I have also given some weight to the trend in the **United Kingdom**, namely the fact that a significant number of terrorist detainees have been released on control orders. In addition, I have given some weight to the fact that **Mr. Charkaoui** and **Mr. Harkat** have been released on strict conditions and that there have been no significant issues to date arising from their release. [...] **Mr. Mahjoub** shall be released from detention upon the terms and conditions set out [...] once the **Court** is satisfied that the requirements set out therein have been met. [...] [Application allowed]
COUNSEL: BARBARA JACKMAN TORONTO

Stay-Student-Loss of session at UQATR-criminality

17. JOHAN-KÉVIN MAGANGA 2007 CF 94 IMM-22-07 29 JANVIER 2007
SHORE J.: [...] **M. Maganga** allègue comme préjudice irréparable que l'exécution de la mesure de renvoi: Qu'il perdra sa session d'hiver à l'*Université du Québec à Trois-Rivières*; Qu'on l'empêche de payer son amende et sur-amende dans un délai de trois mois. [...] **M. Maganga** a été avisé par l'agent que son entrevue avait pour but d'examiner son statut au **Canada**. En l'espèce il revenait à

M. Maganga de ne pas se mettre dans une situation qui compromettrait son statut. Le défendeur soutient qu'en étant condamné pour l'acte criminel prévu à l'article 235b) du *Code criminel*, **M. Maganga** devenait interdit de territoire en vertu de l'alinéa 36(2)a) de la *Loi*, perdait son statut de résident temporaire du fait de l'émission d'une mesure de renvoi (articles 44 et 47b) de la *Loi*) et perdait son permis d'études conformément aux articles 65c) et 222 du *Règlement*. [...] L'émission de la mesure d'expulsion résulte de l'application de la loi et qu'il n'est donc pas dans l'intérêt de la justice de casser la mesure d'expulsion pour les motifs invoqués par **M. Maganga** puisque le résultat serait inévitablement le même, soit l'émission d'une mesure d'expulsion. [...] **M. Maganga** ne s'est pas déchargé de son fardeau de démontrer l'existence d'une question sérieuse. [...] [Application dismissed]

COUNSEL:

NICOLAOS PAPIRAKIS

TROIS-RIVIÈRES

Form letter-an undertaking to consider the matter-Applicants now entitled not to be removed until Board has made determination

18. PAUSIDES COROMOTO FLORES EY. AL. 2007 FC 135 IMM-1472-06 FEBRUARY 6, 2007

HUGHES J.: [...] The **Board** responded to [reconsideration][...]: "It appears that your application is based on the use of the *Chairperson's Guideline 7* and [*Thamotharem*]. This *Federal Court* decision is being appealed to the *Federal Court of Appeal* [...]. As such, the [RPD] will not deal with your application to reopen until the *Court of Appeal* rules on the appeal. The [RPD] will examine your application to reopen soon after the *Federal Court of Appeal* hands down its decision in *Thamotharem*." Were it not for this response by the **Board** providing, in effect, an undertaking to consider the matter once the *Federal Court of Appeal* has given its decision, I would have readily dismissed the present application [...]. However, since the **Board** has now taken upon itself the undertaking to re-visit the matter by its letter [...], it must accept the natural consequences of its actions. It would be unfair for the **Removals Officer** to continue to remove the **Applicants** having regard to that undertaking. The **Applicants** now are entitled not to be removed until the **Board** has made its determination following the decision of the *Federal Court of Appeal* in *Thamotharem*. It will be so ordered. [...] [Application for stay granted]

COUNSEL: JACK DAVIS

DAVIS AND GRICE

TORONTO

Stay-no irreparable harm-Israel

19. IREN TULINA-LITVIN 2007 FC 105 IMM-190-07 JANUARY 31, 2007

SHORE J.: [...] Irreparable harm is more substantial and more serious than personal inconvenience. It implies the serious likelihood of jeopardy to an **Applicant's** life, liberty or security of the person, or an obvious threat of ill treatment in the country to which removal will be effected. [...] The evidence supporting such a finding must be clear and non-speculative. Neither unpleasant conditions in the country to which the **Applicant** is scheduled to be removed, nor the fact that **Canada** is a preferable place to live, constitutes irreparable harm. [...] [T]he **Applicants** have not shown that the separation of their family constitutes irreparable harm. [...] [T]he **Applicants'** pending applications for permanent residence based on [H&C] consideration do not invoke a risk related to their personal safety. Furthermore, the **Applicants** did not apply for leave to this **Court** of their negative **PRRA** decision. The (RPD) came to the conclusion that State protection was available to the **Applicants** in **Israel** and although they sought an application for leave [...] it was denied [...]. The **Applicants** also allege [...] that they will face discrimination if they are returned. This allegation, however, is not supported by an affidavit and cannot be considered by this **Court**. Nonetheless, in a similar case *Abramov v. M.C.I.*, [1998] F.C.J. No. 1579 (QL), in which the **Applicant** was alleging that she and her minor child would suffer discrimination if they were to return to **Israel**, **Justice Evans** concluded that discrimination that was not life threatening did not constitute irreparable harm. [...] In another attempt to show irreparable harm, the **Applicants** pointed out that the **Applicant Alex Tulin-Litvin** will be incarcerated if he is sent back to **Israel** because he objected to serve in the **Israeli** army. [...] Given that [he] knowingly contravened a law of general application, the **Respondent** specified that he fears prosecution rather than persecution and that this does not constitute irreparable harm. [...] Moreover, the **Applicant Iren Tulina-Litvin** does not allege in her affidavit how she would be at risk if she were to be returned to **Israel**. She alleges [...] that she is adducing a travel advisory for **Israel** and surrounding areas prepared by foreign affairs. In respect of this document, [...] it does not advise travelers to leave **Israel**. Rather, it is a travel advisory specifically in regard to the **West Bank** and the **Gaza Strip**; and furthermore, advises caution throughout the country. [...] [Application dismissed]

COUNSEL: PETER SHAMS

SAINT-PIERRE GRENIER

MONTREAL

Stay-Albania had significant problems with police corruption and organized crime

20. NDRE MALSHI 2007 FC 191 IMM-84-07 FEBRUARY 20, 2007

PHELAN J.: [...] The **PRRA Officer** held that evidence that **Albania's** witness protection program was ineffective was irrelevant. This conclusion appears to be based on the fact that the **Applicant** was not in a witness protection program. There was ample evidence before the **Officer** that **Albania** had significant problems with police corruption and organized crime. This evidence was found in both the **U.S. DOS Reports** and the **Home Office (U.K.) Reports**. While there was evidence of police responsiveness to complaints, the **Officer** appears to have missed the thrust of the **Applicant's** argument that the **Albanian** police are unable to protect even those they put under protection – even less so for those who merely lodge a complaint about criminal activity. If the **Applicant** is correct, then the **PRRA Officer** failed to assess the risk to the **Applicant** based on current information. [...] [T]he **Applicant** has established sufficient evidence of irreparable harm [...]. The balance of convenience flows from the earlier findings and therefore favours the **Applicant**. [...] [Application for stay granted]

COUNSEL:

WAIKWA WANYOIKE

TORONTO

Stay-degree of establishment only one element amongst several others to be weighed/considered by H&C Officer-USA Removal

20. NADIATH RADJI ET. AL. 2007 FC 100 IMM-343-07 JANUARY 31, 2007

SHORE J.: [...] In the assessment of the best interests of the principal **Applicant's** child, the **Officer** made the following observations: *The minor Applicant is a citizen of the U.S. and is currently almost 5 years old. She arrived in Canada at the age of 2 years and 10 months; She lived in Benin, her mother's country of origin, between the ages of 3 months and 16 months; She has also visited France for a short period and lived in the United States; She has already travelled and no indication was given that she was unable to adapt to the different locations in which she had lived; Her father is not involved in her upbringing; As the child of a citizen of Benin, a right to citizenship in that country exists; She has adapted well to her environment in Canada; She is not yet old enough to attend school; The educational opportunities for girls are improving in Benin; The principal Applicant is well educated, having pursued her studies in Benin as well as the Ivory Coast; The principal Applicant has demonstrated that she is prepared to do everything in her power to make sure that her daughter receives the best services and care available to her.* [...] While the **Applicant's** efforts to integrate into **Canadian** society were a positive factor in her favour, the degree of establishment is only one element amongst several others that had to be weighed and considered by the **H&C Officer**. The **Applicants** did not demonstrate that their degree of establishment went beyond that which can normally be expected from persons having lived in this country for two years. They did not demonstrate that their departure from **Canada** would cause unusual, undeserved or disproportionate hardship with respect to their current situation in **Canada**. The **H&C Officer**, therefore, determined that this factor was not a sufficient reason, in and of itself, to justify the granting of a dispensation of the requirement of applying for a permanent resident visa from outside of **Canada**. [...]

Alleged incompetence of former counsel: Such claims are not to be taken lightly as they affect the professional reputation of the person in question. The test for incompetent counsel is very high. It must be shown that there is a reasonable probability that, if not for the counsel's unprofessional errors, the result of the proceeding would be different. Whether or not the claims are substantiated, the principal **Applicant** is nonetheless responsible for the submissions that were made in her name. The principal **Applicant** claims that her counsel had her sign a blank copy of the **H&C** form. As an educated woman that already had experience in filling out forms within the context of her refugee claim, it is clear that the principal **Applicant** must take responsibility for her own negligence in signing a blank document without being aware of its content. Furthermore, the **H&C Officer's** conclusions regarding the absence of risk of excision for the **Applicant's** daughter are not determinative of the claim. They are but one element amongst several others that were considered in rendering the negative decision. The **Applicants** cannot therefore rely on the alleged errors made by her former counsel in order to establish a serious issue with respect to the **H&C** decision. [...]

There is no irreparable harm in the case at bar as the **Applicants** are being removed to the **United States**. The principal **Applicant's** affidavit is completely silent with respect to any harm that she or her daughter could suffer if they are removed to the **United States**. [...] [T]he evidence before the **H&C Officer** demonstrated that the principal **Applicant** arrived in **Canada** in a depressive and suicidal state. [...] No evidence was submitted to this **Court** with respect to the principal **Applicant's** access to psychological and social services in the **United States**, the country to which the **Applicants** are being returned. [...] [Application for stay dismissed]

COUNSEL: JARED WILL MONTREAL

Stay Application-Late JR Application

21. VERONICA SOOYINGALEUNG 2007 FC 130 IMM-404-07 FEBRUARY 5, 2007

HUGHES J.: [...] [T]here has been nothing shown on the record that would constitute harm beyond that expected in many cases of dislocation and return to a country where ties have become remote. [...] A second point arises [...]. The *Notice of Application* acknowledges that the decision was made and communicated to the **Applicant** over six months ago. Therefore [...] the **Applicant** is required to seek leave for an extension of time to file the application. Although the **Notice**, improperly, seeks to explain the delay citing failure to receive detailed reasons, and poor advice from an immigration consultant. That is a matter for evidence, not for the **Notice**. [...] Unless leave is given to file the application late, there is no basis for a stay of removal order. **Applicants** seeking a stay of a removal order based on a late filed application should provide the judge hearing the motion for a stay with evidence that would satisfy the **Court** that permission to file an application late should be given. The **Court** should, on the motion for a stay, also decide the issue as to permission to file late. If the **Applicant** fails to persuade the **Court** that late filing is permissible, the stay motion fails. If the **Applicant** succeeds, then the stay motion is then to be dealt with on its merits. [...] [Application for stay dismissed]

COUNSEL: DANISH MUNIR TORONTO

Stay Application-Late JR Application

22. MUHAMMAD ZAKIR SHAIKH 2007 CF 110 IMM-244-07 1 FÉVRIER 2007

SHORE J.: [...] [II] a eu copie de la décision de l'agent le 6 juin 2006. Ce n'est que [...] 7 mois plus tard, que le demandeur a déposé et signifié sa **DACJ**. [...] la **Loi** prévoit que le délai pour déposer une demande d'autorisation et de contrôle judiciaire est de 15 jours suivant la décision dans le cas d'une mesure rendue au **Canada**. Le demandeur explique dans la demande de prorogation de délai qu'il « n'a pas jugé utile de demander le contrôle judiciaire puisqu'il devait acquérir la résidence permanente américaine ». Au surplus, il explique qu'il est « contraint toutefois de le faire parce qu'il n'arrive pas à obtenir son passeport de l'Inde et sa résidence permanente américaine est bloquée pour ce motif ». La demande de prorogation de délai du demandeur ne rencontre pas les critères

établis par la **Cour** pour l'octroi d'une telle mesure spéciale. [...] Le demandeur n'a pas démontré qu'il y avait des motifs valables pour qu'un juge de cette **Cour** proroge le délai [...] et, par conséquent, il n'a pas démontré qu'il y avait une question sérieuse à instruire dans le cadre de sa **DACJ**. [...] [L]e demandeur n'a jamais mentionné ou soumis de preuve qu'il éprouvait des difficultés à obtenir son passeport **indien**, ni qu'il ne pouvait se réclamer de la citoyenneté d'aucun pays. [...] De la même façon, la preuve soumise [...] au sujet d'une demande de visa aux **États-Unis**, ne fait mention que de façon cryptique aux types de visa dont il est question, sous l'intitulé « *Visa Symbol* », soit **IR1** et **K3**. Toutes ces informations n'ayant pas été mis en preuve devant l'agent, le demandeur ne peut maintenant les invoquer au niveau du contrôle judiciaire et du sursis. [...] [L]e demandeur a donc fait défaut de soulever une question sérieuse au soutien de sa requête. La demande d'un sursis de renvoi pourrait être rejetée pour ce seul motif. [...] [Application dismissed]

COUNSEL:

OLIVIER CHI NOUAKO

MONTRÉAL

Le fait qu'il bénéficie d'une audition ou pas devant la SPR sur le motif de l'art 97 n'est pas déterminant sur le droit à une entrevue
23. ÉDOUARD AOUTLEV 2007 CF 111 IMM-72-07 2 FÉVRIER 2007

SHORE J.: [...] Contrairement à ce que soutient le demandeur [...], le fait que le demandeur bénéficie d'une audition ou pas devant la **SPR** sur le motif de l'**article 97** n'est pas déterminant sur le droit à une entrevue. [...] l'agent **ÉRAR** n'avait pas l'obligation d'envoyer une ébauche de la décision. Enfin, [...] l'agent **ÉRAR** a analysé et soigneusement considéré tous les éléments invoqués par le demandeur. Bien que le demandeur ne soit pas d'accord avec cette décision, encore faut-il démontrer que la décision soulève une question sérieuse. [...] Même si le demandeur doit quitter le pays avant que sa **DACJ**, à l'encontre de la décision d'**ÉRAR** ou **CH** ne soit tranchée, cette **Cour** a maintenu que cela ne constitue pas un préjudice irréparable. En fait, il est purement spéculatif de dire que ceci rendrait inefficace son recours. [...] les allégations du demandeur sont nettement insuffisantes afin de démontrer que son retour en **Russie** lui causerait un tort irréparable; [...]. [Application for stay dismissed]

COUNSEL:

MIROSLAW JANKOWSKI

MONTRÉAL

III. REFUGEE ISSUES

The MQM-MQM meeting with Canadian Members of Parliament, including Prime Minister Harper, then leader of the opposition

1. MUHAMMAD NAEEM 2007 FC 123 IMM-5395-05/IMM-2728-06/ IMM-2727-06 FEBRUARY 7, 2007

DAWSON J.: [...] He was found to be a **Convention** refugee in February of 2001. Immediately thereafter he applied for permanent residence in **Canada**. [...] **Mr. Naeem** was interviewed by the **Officer** for the purpose of determining whether he was inadmissible to **Canada** under **paragraph 34(1)(f)** of the **Act** as a result of his membership in the **MQM-A**. [...] **Mr. Naeem** was a self-admitted member of the **APMSO** and the **MQM-A** and that there was sufficient reliable information on which to conclude that the **APMSO** and **MQM-A** were involved in acts of terrorism during the period from 1988 to 1999 when he was a member. [...] [W]here a request for **Ministerial** relief is made before the **Applicant** has been advised that he is inadmissible and where the **Officer** is satisfied that the **Applicant** is inadmissible, the **Officer** prepares the report described in **section 9.2** of **IP 10**. Then, the **Applicant** is not told of his inadmissibility and the application for permanent residence is held in abeyance pending the **Minister's** decision. However, the fact an application is held in abeyance does not detract from the justiciability of an **Officer's** decision that, but for the exceptional exercise of **Ministerial** discretion, the **Applicant** is inadmissible. [...]

There is no indication as to how the **Officer** understood and applied the definition of terrorism. The reasons do not set out the details and circumstances of the acts characterized to be terrorist acts. Acts such as kidnapping, assault and murder are undoubtedly criminal, but are not necessarily acts of terrorism. It was incumbent on the **Officer** to explain why she viewed them to be terrorist acts. Her failure to do so leads to the conclusion that her reasons do not withstand somewhat probing scrutiny. For these reasons, the first decision was made in error and should be set aside. [...]

The submissions on **Mr. Naeem's** behalf dealt with, among other things, the present status of the **MQM Party**, a recognized political party that as a result of the most recent election forms part of the government of **Pakistan**. [...] Additionally, photographs were enclosed of members of the **MQM** meeting with **Canadian Members of Parliament**, including **Prime Minister Harper**, then leader of the opposition); **Mr. Naeem's** significant financial success as a real estate agent in **Canada**; **Mr. Naeem's** current lack of affiliation with the **MQM** and, historically, his personal lack of involvement in violence; **Mr. Naeem's** lack of knowledge of the **Commission** of any terrorist acts; the **Officer's** conclusion that **Mr. Naeem** posed no threat to **Canada**; the **Officer's** finding that **Mr. Naeem** was cooperative, credible and sincere; and a discussion of the factors relevant to consideration of the national interest. [...] **Mr. Naeem** claims to have broken off any ties with the **MQM** since his arrival in **Canada**. He does acknowledge the existence of offices in **Canada**. He has successfully completed the **Toronto Real Estate Board** examinations and currently works as a real estate agent. He appears to be well established in his career. He lives alone and has no other family members in **Canada**. Given the presence in this case of a number of relevant factors that were favorable to **Mr. Naeem** I find that the failure of the memorandum (and consequently the resulting reasons) to assess and balance all of the relevant factors pertaining to the national interest as described in that portion of **ENF 2/OP 18**, set out above, to be a reviewable error. [...] [Application dismissed]

COUNSEL: LORNE WALDMAN

WALDMAN & ASSOCIATES

TORONTO

He and Johnson were engaging in homosexual acts-perceived as homosexual by his fellow villagers-similarly situated individuals
1. ORLANDO OLIVER JACK 2007 FC 93 IMM-1047-06 JANUARY 31, 2007

O'KEEFE J.: [...] In late 2001, the **Applicant's** neighbours began to suspect that he and **Johnson** were engaging in homosexual acts. The **Applicant** was harassed and beaten by the villagers as a result of his perceived homosexuality. He did not contact the police because he felt they would ignore him. He claimed to know a local gay man who had contacted the police after being attacked by the villagers, but had not received help. [...] He eventually saved enough money to fly to **Canada** on a six-month visitor's permit, although he never intended to return to **St. Vincent**. [...] The **Applicant** was perceived as homosexual by his fellow villagers, and has testified that he engaged in homosexual acts with **Johnson**. [...] [H]e and **Michael** were similarly situated individuals. Both were citizens of **St. Vincent** who were harassed and beaten by their fellow villagers for having engaged in homosexual acts. The **Board's** reasons state that the **Applicant** failed to provide clear and convincing evidence that **St. Vincent** was unable or unwilling to protect him. However, the **Applicant** testified [...] he was aware of a similarly situated individual who had not been protected by the state. I would also note that there were no adverse credibility findings made against the **Applicant**. [...] [T]he **Board** reached an unreasonable conclusion regarding the availability of state protection to those perceived as homosexuals in **St. Vincent**. The **Board** must at least address the evidence of a similarly situated individual. [...] [Application allowed]

COUNSEL: PATRICK J. ROCHE TORONTO

Fear of provoking or angering the Board member

2. FAISAL JAVED KHATANA 2007 FC 152 IMM-1646-06 FEBRUARY 9, 2007

DAWSON J.: [...] At all times, members of the **Board** must remember their role as an impartial decision-maker. They must also remember how difficult it is for counsel to object to a **Board** member's conduct without fear of provoking or angering the **Board** member. [...] [I]t would have been preferable for the **Board** member to have made fewer interventions while counsel was examining her client. However, having reviewed the transcript I am not satisfied that the **Board's** interventions were such as to constitute a breach of procedural fairness. Ultimately, counsel was given the opportunity to adduce the evidence she wished. [...] [Application dismissed]

COUNSEL: CHANTAL DESLOGES GREEN AND SPIEGEL LLP TORONTO

Form letters-"this is one of the dangers of using form letters without making the necessary changes"

3. PETAR NIKOLAEV MILUSHEV FEBRUARY 16, 2007 2007 FC 180 IMM-1255-06

O'KEEFE J.: [...] [T]here was considerable merit in the **Applicant's** counsel's belief that he would be given an opportunity to address the finding that two of the medical reports were fraudulent, especially when the letter states: "*I look forward to seeing you at the proceeding.*" There is no indication of any deliberate attempt to prevent the **Applicant** from addressing the findings but this is one of the dangers of using form letters without making the necessary changes. [...] [T]he **Board's** negative credibility finding was patently unreasonable, and it was based upon a misapprehension of the facts that were before the **Board**. In addition, the fact that two of the medical reports were determined to be fraudulent should not have resulted in a negative credibility finding, since the **Applicant** was not given an opportunity to address them. [...] [Application allowed]

COUNSEL: ROBERT E. MOORES BURLINGTON, ONTARIO

Complicity-l'association volontaire du demandeur avec ce gouvernement [Burundi]

4. THARCISSE RYIVUZE 2007 CF 134 IMM-3663-06 8 FÉVRIER 2007

SHORE J.: [...] [L]'intention commune qui peut être déduite de l'association volontaire du demandeur avec ce gouvernement [Burundi] est suffisante pour conclure à la complicité par association. [...] [Application dismissed]

COUNSEL: ANNIE BÉLANGER BÉLANGER FIORE MONTRÉAL

Refugee 'sur-place' claim-consider credible evidence of activities while in Canada, independently from motives for conversion

5. MOSTAFA EJTEHADIAN 2007 FC 158 IMM-2930-06 FEBRUARY 12, 2007

BLANCHARD J.: [...] In 1978, the **Applicant** visited his brothers in the **United States** who were studying in **Utah**, and remained there until 1981, during which time he met members of the **Mormon Church**. After this, the **Applicant** returned to **Iran** and completed his military service. In August of 2004, while in **Vancouver** on a visitor's visa, the **Applicant** met members of the **Mormon Church** who rekindled his interest in the faith. [...] He was subsequently baptized as a member of the **Mormon Church** and later became a priest in the **Church**. Upon learning of the **Applicant's** conversion, the **Applicant's** father-in-law demanded that he abandon his membership in the **Mormon Church** or divorce his daughter. [...] The **IRB** accepted that apostasy and proselytizing of **Christians** to **Muslims** in **Iran** could result in the **Applicant's** death. The **IRB** [...]: *Was this conversion a legitimate conversion, as the claimant alleges, or was it simply as a means to remain in Canada and claim refugee status?* The **IRB's** articulation of the test in a *sur-place* claim is incorrect. In a *refugee sur-place* claim, credible evidence of a claimant's activities while in **Canada** that are likely to substantiate any potential harm upon return must be expressly considered by the **IRB** even if the motivation behind the activities is non-genuine: *Mbokoso v. M.C.I.*, [1999] F.C.J. No. 1806 (QL). [...] The **IRB** accepted that the **Applicant** had converted and that he was even ordained as a priest in the **Mormon** faith. The **IRB** also accepted the documentary evidence to the effect that apostates are persecuted in **Iran**. In assessing the **Applicant's** risks of return, in the context of a *sur-place* claim, it is necessary to consider the credible evidence of his activities while in **Canada**, independently from his motives for conversion. Even if the

Applicant's motives for conversion are not genuine, as found by the **IRB** here, the consequential imputation of apostasy to the **Applicant** by the authorities in **Iran** may nonetheless be sufficient to bring him within the scope of the **Convention** definition. [...] [Application allowed]

COUNSEL:

LORI HILL

HALIFAX

Réfugié 'sur place'-considérer preuve documentaire, indépendamment de la question de la crédibilité

6. **JAVAD MOHAJERY ET. AL.** 2007 CF 185 IMM-2528-06 19 FÉVRIER 2007
BLANCHARD J.: [...] La **Commission** a-t-elle commis une erreur en omettant de traiter et de se prononcer sur la question de réfugié *sur place*? [...] La **Commission** n'a accordé aucune valeur probante à la preuve documentaire relative aux activités des demandeurs au **Canada**, et elle a déterminé qu'il ne s'agissait que d'une preuve de convenance ou documents utilitaires. [...] La **Commission** [...] a déterminé que cette preuve n'appuyait pas les prétentions du demandeur selon lesquelles lui et son frère s'étaient convertis au **Christianisme en Iran**. [...] [L]a **Commission** se devait de considérer cette même preuve documentaire, indépendamment de la question de la crédibilité des demandeurs, dans le contexte d'une demande de réfugié sur place. Cette preuve documentaire, sans établir la sincérité de la conversion des demandeurs, démontre à tout le moins qu'ils ont eu des activités religieuses au **Canada**. Je considère que cette preuve est suffisante pour que la **Commission** soit requise de procéder à l'analyse de la question de réfugié sur place, dans la mesure où la preuve documentaire établit que la conversion de l'**islam** au **christianisme** est un crime très grave, voire passible de la peine de mort en **Iran**. [...] [Application allowed]

COUNSEL:

ANNIE BÉLANGER

MONTRÉAL

Bribery and Article 1F(b)

7. **ANGHEL VLAD** 2007 FC 172 IMM-1800-06 FEBRUARY 15, 2007
SNIDER J.: [...] He was charged and convicted of the crime of accepting a bribe and was sentenced to three years of prison in a penitentiary. [...] The existence of a conviction, and even a warrant, issued by a foreign country may be sufficient "*serious reasons for considering*". The equivalent *Canadian Criminal Code* provision (s. 120(a)) provides for imprisonment for a maximum of 14 years thus meeting the standard for a "*serious non-political crime*" set out in *Chan*. It follows that the **Applicant's** conviction is strong *prima facie* evidence to support the **Article 1F(b)** finding. This is particularly so, in this case, where the **Board** had before it evidence that the **Applicant** has had access to three levels of judicial oversight. [...] There is no need for the foreign law to be absolutely equivalent to the relevant **Canadian** offence. Foreign legislation is not determinative of whether a serious non-political crime has been committed for **Canadian** immigration purposes, although it may be helpful in assessing the crime. The focus must be on whether the acts of the claimant could be considered crimes under **Canadian** law. The words of a relevant foreign law may be helpful but need not be identical. [...] [E]ach of the findings of the **Board** can be supported by the evidence. There is no finding that can be described as pure speculation. [...]

The **Applicant** argues that the **Board** erroneously found that the "*bribe was too small*" and ignores the relative size of the alleged bribe. [...] However, in balancing other findings the **Board** made, I do not find that the overall credibility finding was based solely on this factor, and thus did not lead to a patently unreasonable decision. [...] The evidence before the **Board** of the conviction and the circumstances surrounding that conviction, coupled with the **Board's** finding that the **Applicant's** claim of a frame-up lacked credibility, is capable of supporting the **Board's** conclusions. [...] [Application dismissed]

COUNSEL: MELISSA MELVIN

GREEN AND SPIEGEL, LLP

TORONTO

Not claiming refugee status in Sweden and the United States=had also applied for permanent residence in Canada

8. **XIAO RONG XI** 2007 FC 174 IMM-2117-06 FEBRUARY 15, 2007
BLAIS J.: [...] It was not unreasonable for the panel to question the credibility of the **Applicants** given all the evidence, notably the reasons provided by the **Applicants** for not claiming refugee status in **Sweden** and the **United States**, as well as the fact that the **Applicants** had also applied for permanent residence in **Canada**. [...] [Application dismissed]

COUNSEL:

RANDAL MONTGOMERY

TORONTO

Internal Flight Alternative-Cairo vs. Alexandria

9. **ATEF BOTROS ET. AL.** 2007 FC 118 IMM-1177-06 FEBRUARY 2, 2007
GAUTHIER J.: [...] It is undisputed that **Cairo** is a very large city with over 7 million residents and is located 200 kilometres from **Alexandria**. In these circumstances and considering the evidence before it, it was not absurd or illogical for the **RPD** to conclude that the **Applicants** had a valid **IFA** there. Furthermore, the **Court** is satisfied that **RPD** properly considered **Atef Botros'** evidence in that respect. [...] [Application allowed] **CERTIFIED:** a) Does *Guideline 7*, issued under the authority of the *Chairperson* of the **IRB**, violate the principles of fundamental justice under s. 7 of the [*Charter*] by unduly interfering with claimants' right to be heard and right to counsel? b) Does the implementation of paragraphs 19 and 23 of the *Chairperson's Guideline 7* violate principles of natural justice?

COUNSEL:

JACK C. MARTIN

TORONTO

State Protection-Did very little to seek the protection of available state authorities

10. ANASTASIA IOSIFOVNA TRUS ET. AAL. 2007 FC 107 IMM-1761-06 JANUARY 31, 2007

BARNES J.: [...] **Mr. and Mrs. Trus** did very little to seek the protection of available state authorities. [...] When the **Board** asked **Mrs. Trus** if she had a reason for failing to obtain documents to corroborate all of her complaints to the police, she responded: "I don't know". When she was asked about her failure to lodge a complaint with the **Ombudsman** she said: "We're old people. We don't go to places like that". The **Board's** concern about the adequacy of these responses is well-founded. There was ample evidence [...] that the **Applicants** had not sufficiently availed themselves of the state protection options in **Moldova**. [...] Their claim to protection was based on persecution by non-state parties and not by the police. Accordingly, the **Board** did not err by declining to draw a link between the evidence of police as the agents of persecution and the issue of their effectiveness in providing protection to citizens from criminal behaviour. [...] [Application dismissed]

COUNSEL:

STEVEN BEILES

TORONTO

Argentina-citizenship vs. nationality

11. ADRIANA SANTAMARIA CRAST 2007 FC 146 IMM-1353-0 FEBRUARY 7, 2007

HUGHES J.: [...] Until a few years ago, the **Applicant's** father was a well known activist and writer in **Mexico**. He left **Mexico** and came to **Canada** where he made a successful claim for refugee status. Her father now lives in **Canada** carrying on an academic career. The **Applicant**, as her father's daughter, has experienced threats of violence in **Mexico** to the extent that she also seeks refuge in **Canada** to be with her father. [...] [A]ny person born in the **Argentine** is considered to be both a national of **Argentine** and a citizen of that country. [...] If an **Argentine** national has lost citizenship that person can apply to a **Federal Court** judge for restitution of citizenship, but only if they reside in **Argentina** at the time. Generally speaking, restitution will not be denied unless the **Applicant** has been found guilty of a major crime in a final judgment. However, the evidence is that case for restitution is dealt with on an individual basis, no general statement as to the outcome of any particular application can be made. Applying this law to the **Applicant** here, it can be seen that, by birth, the **Applicant** became an **Argentine** national and citizen. By acquiring **Mexican** citizenship she lost **Argentine** citizenship but not nationality, she will always have that. To regain **Argentine** citizenship the **Applicant** would first have to reside in **Argentine** and then make an application to a **Federal Court** judge. [...] Residency is a requirement under **Argentine** law before a claim can be made for reinstatement. The **Board** in its Reasons did not address that issue at all. To ignore that issue was an error of law. No factual finding as to that point was made, thus there was a patently unreasonable error of fact. Second, the **Board** does not address the issue as to the degree of control that an **Applicant** for reacquisition of citizenship must have over the success of the ultimate result. The **Federal Court of Appeal** in *Williams* indicates that if reacquisition is merely a matter of formalities then the control is certain. Here more than mere formalities are required, residency plus an application to a **Federal Court** is required. The evidence indicates that the result cannot be predicated with certainty. The Reasons of the **Board** as to the degree of certainty are lacking. [...] The findings of the **Board** are not reasonable. [...] [Application allowed]

COUNSEL:

MICHEAL CRANE

TORONTO

Forensic evaluation and identity-results of forensic verification that appeared to be so important to Board at time of the hearing

12. GANG LIU 2007 FC 151 IMM-1570-06 FEBRUARY 9, 2007

DAWSON J.: [...] I would have deferred to the **Board's** determination that **Mr. Liu** had not established his identity, for the reasons given by the **Board**, all of which were supported by the evidence, and none of which were patently unreasonable. However, [...] at the commencement of the hearing, the **Board** advised [...]: "I will be getting a forensic examination of the resident ID card, which is what we had requested in the beginning [...] Should there be anything untoward in the evaluation of the resident identity card I will inform your counsel. [...]". At the conclusion of **Mr. Liu's** testimony [...]: "do you have submissions? I'm going to be asking for a forensic check on the resident ID card." After the **Board** heard counsel's submissions, the hearing terminated on the following basis: **PRESIDING MEMBER:** "Okay, Counsel, I'm going to, as I indicated, request the original resident ID card back for examination. And at that point I will make my decision. [...] And if it's necessary to come back to talk about the report, I'll inform you. So, we're now, sir, we are now adjourned for a forensic examination of your resident identity card. [...] However, sir, if there is any necessity for you to come back, we'll inform you. Okay?" Neither the tribunal record nor the reasons of the **Board** shed any light upon whether any forensic testing took place, and, if it did not, why the **Board** chose to render its decision some nine months later without receiving the results of the forensic verification that appeared to be so important to the **Board** at the time of the hearing. [...] [I]n view of the **Board's** statements quoted above, no amount of curial deference can justify allowing the **Board's** finding on identity to stand. [...] [Application allowed]

COUNSEL:

LEONARD H. BORENSTEIN

LEWIS & ASSOCIATES

TORONTO

Board ought to have considered the objected basis of her claim based on the fact that she was an MDC member

13. TICHAMUKA JEAN MUSIYIWA 2007 FC 181 IMM-1596-06 FEBRUARY 16, 2007

O'KEEFE J.: The documentary evidence [...] about **Zimbabwe** [...]: *Torture has been rampant since 1999 and has been used primarily against members and suspected members of the MDC, the main political party opposing Mugabe's presidency. Commercial farm workers, journalists, and others have also fallen prey. Indeed, it has become an unbroken cycle, used by the regime to control populations and suppress opposition to Mugabe and to democratization. ...Rape cases, which Reeler said could only be described as "political rape" are prevalent. The victims are typically women who belong to MDC, are married to MDC members, or are so*

suspected. Their attackers tell them that is why they are being raped. The prevalence of this is hard to document, however, because rape victims seldom come forward and report the assaults. The **Applicant** was an **MDC** member and the **Board** did not address the objective basis of her claim as an **MDC** member. As the documentary evidence shows, **MDC** members were being persecuted. The **Board** ought to have considered the objected basis of her claim based on the fact that she was an **MDC** member. [...] [Application allowed]

COUNSEL:

KINGSLEY I. JESUOROBO

TORONTO

"Where there is evidence that may be critical to an Applicant's claim, it is essential that the RPD deal with that evidence"

14. NALITA DEVI

2007 FC 149

IMM-3994-06

FEBRUARY 8, 2007

LAYDEN-STEVENSON J.: [...] Where there is evidence that may be critical to an **Applicant's** claim, it is essential that the **RPD** deal with that evidence. Selective reference to evidence that leads in one direction, without recognition of evidence to the contrary, is not appropriate. [...] [T]he **RPD** concluded that the **Applicant** "did not indicate that the police were unwilling or unable to investigate the said crimes and prosecute the culprits". However, in her (**PIF**) [...], the **Applicant** did indicate that both the 2003 and 2004 home invasions had been reported to the police. These omissions [...] taint the **RPD's** finding as to the existence of state protection. [...] [I]t is critical that material evidence central to the **Applicant's** position, as it is here, be considered in the analysis.

The finding with respect to discrimination is also flawed. [...] What is missing is any explanation for the distinction between the incidents of common criminality and those of harassment/discrimination. I am unable to discern (from the reasons) how the stolen cattle in 2001 and the break-in of 2004 constitute "acts of common criminality", while incidents of the stabbing of the **Applicant's** husband, the robberies in 2002 and 2003, the break-in of 2003 and the theft of the crops and damage inflicted on the property in 2000 amount to "incidents of harassment". [...] [W]here the cumulative effect of a number of discriminating acts has the potential to result in a finding of persecution, it is not open to the **RPD** to place some acts of one side of the line and other acts on the other side of the line, without providing some rationale for having done so. Its failure in this regard leaves the distinct impression that the incidents were dealt with in an arbitrary manner. To complicate matters further, the **RPD** failed to have regard to all of the incidents delineated by the **Applicant**. [...] [Application allowed]

COUNSEL: SATNAM AUJLA

AUJLA MERCHANT LAW GROUP

CALGARY

Décision orale, reprise par écrit, ne justifie pas l'absence de raisonnement juridique ou le manquement d'une analyse

15. GAELLE SOLIMAN

2007 CF 162

IMM-3959-06

13 FÉVRIER 2007

NOËL J.: [...] [L]'équité procédurale oblige un décideur de donner des motifs suffisants pour justifier leur décision. [...] En ce qui concerne l'analyse concernant l'article 96 de la **LIPR**, la décision de la **SPR** se limite à un résumé limité de la situation factuelle de la demanderesse. Aucune référence aux critères de l'article 96 de la **LIPR** applicable à la demanderesse n'est reproduite dans la décision orale, reprise par écrit. De plus, on n'y retrouve aucun raisonnement juridique dans la décision permettant au lecteur d'identifier le cheminement suivi par la **SPR** pour en arriver à la conclusion que les craintes de persécution de la demanderesse en cas de retour en **Haïti** n'étaient pas reliées à son appartenance au groupe social de la famille. [...] [L]a décision [...] ne démontre aucunement le raisonnement juridique suivi pour en arriver à la conclusion que la demanderesse n'était pas une « personne à protéger » en vertu de l'article 97 de la **LIPR**. [...] [L]e fait que la décision [...] est une décision orale, reprise par écrit, ne justifie pas l'absence de raisonnement juridique ou le manquement d'une analyse appliquant la preuve et les faits aux dispositions législatives pertinentes. [...] [Application allowed]

COUNSEL:

STÉPHANIE VALOIS

MONTREAL

MLC-Aucune analyse n'est faite ou mentionnée au sujet des éléments très pertinents qui ont été déposés au sujet du MLC

16. AJEMA MOLEBE [RESPONDENT]

2007 CF 137

IMM-3034-06

8 FÉVRIER 2007

BEAUDRY J.: [...] **Complicité** [...] La preuve documentaire déposée par le demandeur au sujet des activités du **MLC** comme auteur de violations des droits de la personne est imposante. [...] [L]e tribunal [...]: *Quand à la qualité du MLC comme le mouvement destiné aux fins illimitées et brutales, la représentante du ministre n'a pas démontré qu'un groupe privé de moyens légaux pour changer un régime dictatorial a tort de recourir à la violence légitime. En effet, la preuve documentaire démontre que dès son arrivée au pouvoir, le président Kabila avait mis fin au processus démocratique et instauré une dictature. La rébellion du MLC avait pour but d'instaurer la démocratie, ce qui ne dédouane [sic] pas les auteurs des atrocités sur les civils d'être dénoncés.* Devant l'ampleur de la preuve documentaire la **Cour** considère manifestement déraisonnable cette affirmation du tribunal. Aucune analyse n'est faite ou mentionnée au sujet des éléments très pertinents qui ont été déposés au sujet du **MLC**. [...] Le tribunal n'a pas non plus commenté ou analysé les nombreuses contradictions dans le témoignage oral de la défenderesse en rapport avec la documentation écrite déposée lorsqu'elle est arrivée au pays ainsi que celle déposée auprès des autorités américaines lorsqu'elle a revendiqué aux **États-Unis**. [...] [Minister's] [Application allowed]

COUNSEL FOR RESPONDENT:

LUC R. DESMARAIS

MONTRÉAL

A omis de tenir compte du fait que la situation des demandeurs s'est aggravée la fois où ils ont porté plainte à la police

17. AUGOSTO PEDRO VELASCO ET. AL.

2007 CF 133

IMM-3900-06

8 FÉVRIER 2007

SHORE J.: [...] [L]a **Commission** a omis de présenter, dans ses motifs, une analyse de la preuve documentaire qui lui a été fournie.

[...][L]e groupe **SL** est une organisation terroriste et présente toujours une menace meurtrière au **Pérou** [...]. la **Commission** a rendu une décision déraisonnable, en ce sens qu'elle a omis de tenir compte du fait que la situation des demandeurs s'est aggravée la fois où ils ont porté plainte à la police. Cette conclusion va d'ailleurs à l'encontre du principe établi [...] dans *Shimokawa c. M.C.I.*, 2006 CF 445, [2006] « [...] le demandeur d'asile n'est pas tenu de faire preuve de courage ou de témérité pour demander la protection de l'État. Il lui incombe seulement de tenter d'obtenir la protection de l'État si celle-ci est considérée comme étant raisonnablement assurée. Si le demandeur d'asile prouve de façon claire et convaincante qu'il serait inutile d'entrer en contact avec les autorités ou que cela empirerait la situation, il n'est pas tenu de prendre d'autres mesures ». [...] [Application allowed]

COUNSEL: PETER SHAMS

SAINT-PIERRE, GRENIER, S.E.N.C.

MONTREAL

Gives no reason for not believing lawyer's letter other than mischaracterization lawyer not found out reason for possible arrest

18. AKM SHAMSUDDIN KHAN ET. AL. 2007 FC 115 IMM-7633-05 FEBRUARY 1, 2007

PHELAN J.: [...] This case turns entirely on its facts. [...] The standard of review of credibility findings is accepted as "patent unreasonableness". It is for this reason that the **Court** is reluctant to overturn this decision. However, the **Board** mischaracterized the contents of the lawyer's letter and from this draws a conclusion for which there is no reasonable support. The lawyer's letter specifically states what the reasons are for an arrest – that the **Applicant** is wanted under the "*Special Act*"; a process somewhat similar to **Canada's** security warrants. There is nothing speculative about this information. The **Board** does not challenge the lawyer's opinion that the "*Special Act*" is often used to suppress political views. The **Board** simply says that to do so does not make sense because the **Applicant** was not particularly political. The conclusion ignores the **Applicant's** allegation that the other directors were using political connections to "get" to the **Applicant**. The issue is not whether it makes sense that the authorities would want to arrest the **Applicant** in these circumstances but whether they were attempting to do so. The **Board** gives no reason for not believing the lawyer's letter other than the mischaracterization that the lawyer had not found out the reason for the possible arrest. There is no rational support for the **Board's** conclusion. [...] [Application allowed]

COUNSEL:

PREEVANDA SAPRU

TORONTO

Multiple decisionmakers

19. GLADYS ANNOR 2007 CF 140 IMM-3357-06 7 FÉVRIER 2007

NOËL J.: [...] Est-ce qu'il y a eu une violation de l'équité procédurale en l'espèce du fait que plus de cinq membres de la **CISR** ont entendu le cas à différentes étapes? [...] [L]e fait que le commissaire **Whist** a traité la question préliminaire sur la base de prétentions écrites seulement ne viole aucunement les règles d'équité procédurale. En fin de compte, il n'y a que deux décideurs qui ont rendu des décisions sur la question de fond à savoir si un visa de résident permanent serait issu [...], notamment l'agent **Bryan** qui a rendu la décision initiale et la commissaire **Ross** qui a rendu la décision rejetant l'appel de la décision de l'agent **Bryan**. Puisque seule la commissaire **Ross** a entendu l'appel sur le fond et que cette même commissaire a rendu la décision relative à l'appel de la demanderesse, il n'y a eu aucune violation des règles d'équité procédurale. De toute façon, la demanderesse n'a pas identifié aucun préjudice pouvant justifier un argument d'équité procédurale. En sus, lors de l'audition [...] la demanderesse a eu toute la latitude pour présenter sa preuve et elle ne s'est pas objectée ou encore n'a pas soulevé l'argument d'équité procédurale. [...] [L]a conclusion de la **Commissaire Ross** qu'il n'existait pas une relation filiale véritable entre la demanderesse et **Isaac Sarkwa**, n'était pas manifestement déraisonnable. Donc cette conclusion n'est pas révisable par la **Cour**. [...] Je ne vois pas comment on peut conclure qu'une adoption qui n'est pas véritable en raison de la non-existence d'une relation filiale va à l'encontre du but de la réunification des familles de la **LIPR**. [...] [Application dismissed]

COUNSEL:

JEAN-FRANÇOIS FISET

MONTREAL

Mootness

20. BACHAN SINGH SOGI 2007 CF 108 IMM-3175-06/IMM-2889-06 1 FÉVRIER 2007

NOËL J.: [...] L'arrêt de base pour permettre l'analyse de la question « *Est-ce que la demande de contrôle judiciaire est théorique?* » est l'arrêt *Borowski c. Canada (Procureur général)* [1989] 1 R.C.S. 342. [...] [U]n litige est théorique lorsque la décision à être rendue n'aura aucune répercussion tangible sur les droits des parties impliquées. Dans un tel cas, un tribunal est justifié de refuser de trancher un litige. Toutefois, un tribunal peut utiliser sa discrétion et décider d'entendre un litige s'il peut expliquer l'objectif visé par la détermination d'un litige de nature théorique. [...] Ce n'est pas parce qu'une affaire peut être entendue de façon contradictoire qu'en soi la discrétion devrait être exercée. Il me semble que ce critère doit être au moins complété par l'un des deux autres critères. [...] [I]l n'y a aucun intérêt public et aucune des parties ne sera affectée de façon concrète et tangible si la **Cour** poursuit le contrôle judiciaire des deux dossiers. [...] [J]e ne vois aucun avantage qui pourrait être retiré de la revue judiciaire dans les deux dossiers et donc [...], il n'y a aucune raison d'exercer ma discrétion et de procéder au contrôle judiciaire des deux dossiers. [...] [Application dismissed]

COUNSEL: JOHANNE DOYON

DOYON & ASSOCIÉES

MONTREAL

La SPR a prise pour acquis que l'analyse sous l'article 96 s'appliquait automatiquement à celle de l'article 97

21. MARGARETH VAVAL ET. AL. 2007 CF 160 IMM-3863-06 13 FÉVRIER 2007

NOËL J.: [...] l'analyse à l'appui de l'article 97 de la **LIPR** laisse à désirer. [...] [L]a **SPR** avait une obligation de motiver leur conclusion que la demanderesse principale n'était pas une « *personne à protéger* » au sens de l'article 97 de la **LIPR** pour ne pas

enfreindre les principes d'équité procédurale. [...] Le fait que la décision en l'espèce est une décision orale, reprise par écrit, ne justifie pas l'absence de raisonnement juridique ou le manquement d'une analyse appliquant la preuve et les faits aux dispositions législatives pertinentes. Il me semble que la **SPR** a pris pour acquis que l'analyse sous l'article 96 de la **LIPR** s'appliquait automatiquement à celle de l'article 97. Il s'agit de questions distinctes de droit qui nécessitent un traitement différent. Ça n'a pas été fait pour les fins de l'analyse de l'article 97 de la **LIPR**. [...] [Application allowed]

COUNSEL:

EVELINE FISET

MONTRÉAL

What would be implausible in a Canadian context is not necessarily implausible in the chaotic Zimbabwean context.

22. CLARIS CHIEDZA MUZA

2007 FC 182

IMM-1706-06

FEBRUARY 16, 2007

O'KEEFE J.: [...] *Mother not informed by school that her daughter was forcibly recruited*: The documentary evidence indicates that the **ZANU-PF** is free to do what it wants. Its members can assault, torture and rape people. The **Applicant** testified that the school was government-run and that the headmaster would probably be in trouble if he did not cooperate with the **ZANU-PF**. This could also explain why he did not report their activities to the **Applicant's** mother. What would be implausible in a **Canadian** context is not necessarily implausible in the chaotic **Zimbabwean** context. [...] [T]his implausibility finding is patently unreasonable. *School report*: The **Applicant** testified she was taken from the school approximately three weeks before the end of the school term. The **Board** referred to a school document which it concluded showed that the **Applicant** had finished the term and stated when the next term would begin. Also, the **Board** found that there was no indication under "*Form Teacher's Comments*" that the **Applicant** did not finish the school term. The **Applicant** testified the marks shown were averages from marks achieved prior to her disappearance from the school. The **Board** simply said this was not credible. I note that there were no marks given under the "*Exam*" column. [...] [T]he **Board** cannot use this evidence to find that the **Applicant** lacked credibility. *Passport and Visa*: The **Board** concluded that the **Applicant** went to the **United States** in order to study because she obtained a passport on May 29, 2002, and she received her **U.S.** student visa on August 29, 2002. I would note that the **Applicant** was never asked why she obtained the passport, and that she applied for the student visa on August 21, 2002, which was after she was recruited in mid-July. [...] [T]he **Board's** conclusions [...] are patently unreasonable. [...] [Application allowed]

COUNSEL: D. CLIFFORD LUYT

WALDMAN & ASSOCIATES

TORONTO

SPR a erronément conclu qu'il n'avait fourni aucune preuve documentaire personnelle autre que l'avis de recherche

23. LOTFI ABBES ET. AL.

2007 CF 112

IMM-2989-06 1 FÉVRIER 2007

TREMBLAY-LAMER J.: [...] Le demandeur allègue que le fait d'avoir quitté son emploi avec la **GN** (*laquelle est un corps au service du Président et de la nation*) signifie que s'il devait retourner en **Tunisie**, il serait non seulement arrêté, mais aussi emprisonné et accusé d'avoir trahi son pays. De plus, en raison de la perception de sa trahison de la part des autorités **Tunisiennes**, il croit qu'il serait torturé et il craint pour sa vie. [...] [L]a **SPR** avait exigé des preuves documentaires corroborant le témoignage du demandeur. Celui-ci a donc déposé [...] une circulaire du *Ministre de l'Intérieur de la Tunisie* traitant de situations comme la sienne. Selon ce document, des agents de la **GN** qui sont autorisés à prendre leurs congés à l'extérieur du pays et qui ne reviennent pas tel que prévu sont convoqués devant le conseil d'honneur du corps et licencié. De plus, l'administration doit émettre « *un avis de recherche dans le but d'arrêter l'agent en question et de le présenter à l'Unité de son ancien travail à fin [sic] de régler sa situation administrative ...et récupérer les effets appartenant au corps* ». Une autre sanction mentionnée est le refus de renouvellement du passeport **Tunisien** auprès des consulats à l'étranger «...dans le but de le pousser à rentrer au pays pour régler sa situation administrative ». [...] [L]a **SPR** a erronément conclu que celui-ci n'avait fourni aucune preuve documentaire personnelle autre que l'avis de recherche. Il n'y a aucun motif dans sa décision qui explique pourquoi elle a écarté cette preuve pertinente. [...] [V]u la pertinence du document sur les sanctions imposées à une personne qui ne réintègre pas son poste, il était manifestement déraisonnable pour la **SPR** d'écartier ce document sans motif. [...] [Application allowed]

COUNSEL:

RACHEL BENAROCH

MONTRÉAL

Field investigation conducted by the Canadian High Commission in Islamabad

24. ARSHAD ZIA

2007 FC 131

IMM-3731-06

FEBRUARY 7, 2007

NOËL J.: [...] The **Applicant** claims that in addition to being the subject of a *fatwa*, he is also being targeted by **Pakistani** police, as they filed a false police report against him. [...] A field investigation conducted by the **Canadian High Commission in Islamabad**, without objection from the **Applicant** and after having authorized such inquiries, found that the **FIR** supposedly filed against the **Applicant** had nothing to do with him and was instead linked to a **Mr. Muhammad Shafiq** who was accused of reckless driving. The **Applicant** explains this discrepancy on the basis that **Pakistani** officials are corrupt. Moreover, he claims that the results of the investigation [...] yielded hearsay evidence that is inadmissible before the **RPD**. [...] [T]he **FIR** verification was done solely on the basis of the **FIR** number that was given by the **Applicant**. There was no indication that the **Applicant's** name or that any other name, was given to the police during the investigation. Thus the police would not have known that the **High Commission** was investigating the **Applicant** and thus take actions to sabotage the **Applicant's FIR** file, if one in fact existed. As for the argument that the information yielded by the investigation [...] is hearsay, [...] paragraphs 170(g) and 170(h) of *IRPA* state that the **IRB** is not bound by any legal or technical rules of evidence and, as such, may consider all evidence they consider to be trustworthy and credible. Consequently, the **RPD** was within its right to consider the information yielded by the investigation undertaken by the **High Commission**. Additionally, the **Applicant** on his (**PIF**) responded "no" to the question as to whether he was sought by the police in

any country. Moreover, in **Schedule I**, completed upon his entry to **Canada** [...] the **Applicant** did not mention that he was afraid to return to **Pakistan** because he was being targeted by the **Pakistani** police. [...] [T]he **Applicant** responded "no" to a question relating to whether he was currently charged with or subject to criminal proceedings in any country. When confronted with these inconsistencies [...] [he] said that he had misunderstood the questions on both the **PIF** and the **Schedule I** form. The **RPD** did not accept this explanation. [...] [A] decision of the **IRB** relating to credibility will only be overturned by this **Court** if such a decision is patently unreasonable. [...] [Application dismissed]

COUNSEL:

LENYA KALEPDJIAN

MONTREAL

"Nigerian police does act within the limits of its scarce resources and provides adequate, if not perfect, protection"

25. CHRISTIAN AKOJI

FEBRUARY 7, 2007

2007 FC 147

IMM-846-06

HUGHES J.: [...] [T]he law is clear that this **Court** as a **Court** of judicial review, is not called upon to re-weigh evidence. [...] counsel drew attention to certain allegations in the **Applicant's** **PIF** and oral testimony not specifically mentioned by the **Board** in its *Reasons* [...] that certain members of his political party had been attacked or killed. The **Board** is not required to itemize every piece of evidence before it in its *Reasons*. The conclusions of the **Board**, that the **Nigerian** police does act within the limits of its scarce resources and provides adequate, if not perfect, protection, is not unreasonable. The **Board** was not required to state that it had specifically considered the class of persons to which the **Applicant** alleges he belongs, the **ANPP** since there was no evidence of a complete breakdown in state apparatus. The **Board** said that the **Nigerian** states are making serious efforts to protect its citizens. [...] [Application dismissed]

COUNSEL:

BONIFACE AHUNWAN

TORONTO

Reasons not to be provided to the panel that hears the redetermination

26. TAWANDA JERALD NYAMUKONDIWA

2007 FC 141

IMM-1695-06

FEBRUARY 7, 2007

DAWSON J.: [...] [T]he **Board** did not believe [his] testimony that he had been severely beaten and yet "was told to get some over the counter medication at the clinic". [...] At no time did [he] say he was told to "get some over the counter medicine". Second, the **Board** found that because [he] could enter and leave **Zimbabwe** with ease he did not have the profile of someone who the state considers to be dangerous. However, the state was not [his] agent of persecution. [He] feared young **ZANU-PF** supporters. Third, the **Board** did not believe [his] testimony because it found that after the beating his friends and relatives refused to shelter him and [he] was very vague about where he spent the two weeks that followed the beating. However, [he] stated in his **PIF** and testified orally that not all of his friends and relatives refused to take him in and after staying with high school friends he moved from relative to relative. I am unable to ascertain what testimony the **Board** characterized to be vague, as a review of the transcript shows [he] answered all of the questions put to him and the **Board** did not seek further clarification on this point. Fourth, the **Board** found it to be implausible if the "**ZANU-PF gang**" was looking for **Mr. Nyamukondiwa** that its members would not find him given that [he] did not have too many places in which to hide. The basis in the evidence for this inference is unclear. Finally, the **Board** found that [he] "provided no evidence that [**ZANU-PF**] had come looking for him at his house". However, [he] testified that the tenants who lived at his former residence told him that **ZANU-PF** youths had come looking for him there. These errors are significant and were fundamental to the **Board's** negative credibility finding. [...] **ORDER**: Due to the many errors contained therein, the reasons [...] are not to be provided to the panel that hears the redetermination of this claim. [Application allowed]

COUNSEL:

JIDE OLADEJO

TORONTO

Test Case

27. JOHN DOE ET. AL.

2007 FC 144

IMM-7818-05

FEBRUARY 7, 2007

PHELAN J.: [...] [T]he **Applicants** brought a motion for an interlocutory injunction directing the **Respondent** to allow **John Doe** and his wife to enter **Canada** from the **United States** pending the determination on this judicial review or, alternatively, for an order restraining the **Respondent** from denying him or his wife entry into **Canada**. [...] The evidence is somewhat tentative but it suggests that members of **FARC** have continued to look for **John Doe**. [...] (irreparable harm) [...] [T]o some extent he is the maker (or contributor) of his own "mischief". He has hidden from **U.S.** authorities after ordered to leave and he has failed to exhaust his legal remedies. [...] **John Doe** has not sought a stay of his deportation and a re-opening of his case on the grounds of what is arguably compelling evidence of risk. In the face of this evidence, and without in any way presuming to speak to or for **U.S.** authorities, it is difficult to conceive that such authorities would not, at least, allow such a request for a stay and reconsideration to be entertained. Even the **Respondent**, quite rightly, accepted that this new evidence might have an impact on an **U.S.** immigration judge or the **BIA**. As to the balance of convenience, that determination would be influenced by whether **John Doe** seeks to exhaust his legal remedies. In addition, the **Court** remains concerned about the possibility of mootness. The **Court** is also concerned that [...] if this motion was granted now and the **Applicant** came to **Canada**, **Canadian** authorities have 90 days in which to make an eligibility determination. As a consequence, the **Court** will withhold pronouncing its decision on this injunction motion on condition that the **Applicant John Doe** seeks a stay of deportation and such other relief as may be necessary within seven days of this Order. The **Court** remains seized of this matter in the interim and counsel are to advise the **Court** of any such requests to **U.S.** authorities and the disposition thereof. [...] **ORDER** that the decision on the interlocutory injunction application is deferred on the conditions stipulated in the *Reasons*.

COUNSEL:

BARBARA JACKMAN, ANDREW BROUWER, LEIGH SALSBERG

TORONTO

3. NOTEWORTHY DECISION

Bigamy-perjury-trying to sponsor applicant for nine years-child's asthma exasperated in Philippines-depressive state

1. RUBY BILLIONES MONTECER IRB-IAD VA6-00409 JANUARY 8, 2007

MARGARET OSTROWSKI, MEMBER: [...] She testified that she has been trying to sponsor the applicant for some nine years. [...] She was married to the appellant on September 15, 1998 and a child was born November 16, 2000 in **Vancouver**. The appellant visited the applicant and stayed with him with child from March 2001 to June 2002 and also from October 15, 2006 to November 8, 2006. [...]

The applicant is a 54-year-old assistant chef in the **Philippines** [...]. In 1990, he ceased to live with his first wife and testified that he has virtually no contact with this children of his first marriage since that time and that his first wife is now deceased. [...] he married his girlfriend on February 3, 1997. He testified that he wanted to stay with his wife but she contracted meningitis and that her son did not want [him] to visit her. The second marriage was entered into without an annulment or a divorce from the first marriage. On September 15, 1998 he entered into a third marriage with the appellant. [...] There is no record of any conviction of the applicant of the bigamy and perjury in **Canada** or the **Philippines**. [...] I have considered the following factors as persuasive in making my decision: That there was some new evidence that was persuasive that was not available to the visa officer – two letter from doctors indicating that at least the appellant's child's asthma has been exasperated in the **Philippines** and that the doctor suggested that the child is affected by the absence of the father. I note that the evidence indicates that the appellant has worked very hard to have her child have lots of contact with her father, the applicant, through very frequent telephone calls and I find it credible and am persuaded that the child speaks frequently to her father and that she suffers from distress due to the absence of her father and [...] this distress is aggravated by the depression of her mother. I am persuaded from the letters of the doctors and the testimony of the appellant that the climate in the **Philippines** exasperates the asthma of the child and that living there is less desirable for the child than living in **Canada**.

I also find it credible and believable that the appellant is confused. I found it believable that she suffers from anxiety and depression and is currently on several medications for anxiety and depression. I am of the opinion that the medication affected some clarity of her thinking at the hearing. The testimony of the appellant at the hearing was sometimes inconsistent and less than exact. I agree with the appellant's counsel that the depressive state of the appellant affects her child to the extent that the appellant is not now working at a job and the child is not going to school.

I have considered the criminal allegations and I note that the alleged criminality was of a nature where there was no bodily harm to others and no considerable threat to affect the health and safety of **Canadians**. I also noted that the allegations of perjury, though not taking away from the seriousness of such an act, was related to the bigamy in that it had to do with the swearing of false documents as to his marital status.

I have taken note that there has been some financial support by the applicant to the child at the last visit when he partially paid for his child's medical bills in the **Philippines**. I also note that the appellant, with virtually no assets, would benefit from the financial support from the applicant. I am persuaded by the demeanour of the appellant in her testimony and from the demeanour of the child in the courtroom that they are both very attached to the applicant and emotionally dependent on him. I am of the opinion that the appellant's daughter would benefit from having her father living with her in **Canada**. I also gave some consideration to the fact that the **Minister's** counsel took no position with regards to the humanitarian and compassionate grounds and the best interests of the child. [...][Appeal allowed]

COUNSEL:

RON LIBERMAN

VANCOUVER

4. NOTICES

The next **Lexbase Sending** is: mid-**APRIL 2007**
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